

MONTANA LEGISLATIVE HISTORY

Chapter 361 ~~19~~ 2003Bill H 437 S _____Original bill & history X CH. Committee on NATURAL RESOURCESS. Committee on NATURAL RESOURCESHearing Date(s) 2/12 X CHearing Date(s) 3/5 X C2/19 X C3/10 X CEXEC. ACTION 2/21 X CEXEC. ACTION 3/17 X C

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Date Out _____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

Bill Draft Number: LC0446**Bill Type - Number:** HB 437**Short Title:** Implementation of constitutional provisions on the environment**Primary Sponsor:** Alan Olson**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 65

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/17/2003			
(H) Signed by Governor	04/16/2003			
(H) Transmitted to Governor	04/12/2003			
(S) Signed by President	04/11/2003			
(H) Signed by Speaker	04/11/2003			
(C) Sent to Printing	04/11/2003			
(C) Sent to Printing	04/10/2003			
(H) Returned from Enrolling	04/10/2003			
(H) Sent to Enrolling	04/09/2003			
(H) 3rd Reading Passed as Amended by Senate	04/09/2003	64	35	
(H) Scheduled for 3rd Reading	04/09/2003			
(H) 2nd Reading Senate Amendments Concurred	04/08/2003	60	40	
(H) Scheduled for 2nd Reading	04/08/2003			
(H) Scheduled for 2nd Reading	04/07/2003			
(S) Returned to House with Amendments	03/28/2003			
(S) 3rd Reading Concurred	03/28/2003	33	17	
(S) Scheduled for 3rd Reading	03/28/2003			
(S) 2nd Reading Concurred	03/27/2003	29	18	
(S) 2nd Reading Motion to Amend Failed	03/27/2003	20	28	
(S) Scheduled for 2nd Reading	03/27/2003			
(S) Scheduled for 2nd Reading	03/26/2003			
(H) Revised Fiscal Note Printed	03/25/2003			
(H) Revised Fiscal Note Received	03/24/2003			
(C) Sent to Printing	03/18/2003			
(S) Committee Report--Bill Concurred as Amended	03/18/2003			(S) Natural Resources
(S) Committee Executive Action--Bill Concurred as Amended	03/18/2003	10	2	(S) Natural Resources
(H) Revised Fiscal Note Printed	03/14/2003			
(H) Revised Fiscal Note Received	03/13/2003			
(S) Hearing	03/10/2003			(S) Natural Resources
(H) Revised Fiscal Note Requested	03/07/2003			
(S) Hearing	03/05/2003			(S) Natural Resources
(S) Referred to Committee	02/27/2003			(S) Natural Resources
(S) First Reading	02/27/2003			
(H) Transmitted to Senate	02/26/2003			
(H) 3rd Reading Passed	02/26/2003	61	37	
(H) Scheduled for 3rd Reading	02/26/2003			
(H) 2nd Reading Passed	02/25/2003	72	28	
(H) 2nd Reading Motion to Amend Failed	02/25/2003	38	61	

(H) Scheduled for 2nd Reading	02/25/2003		
(C) Sent to Printing	02/24/2003		
(H) Committee Report--Bill Passed as Amended	02/22/2003		(H) Natural Resources
(H) Committee Executive Action--Bill Passed as Amended	02/21/2003	12	6 (H) Natural Resources
(H) Hearing	02/12/2003		(H) Natural Resources
(H) Fiscal Note Printed	02/03/2003		
(H) Fiscal Note Received	02/01/2003		
(C) Introduced Bill Text Available Electronically	01/25/2003		
(H) Fiscal Note Requested	01/25/2003		
(H) Referred to Committee	01/25/2003		(H) Natural Resources
(H) First Reading	01/25/2003		
(H) Introduced	01/25/2003		
(C) Draft Delivered to Requester	01/22/2003		
(C) Draft Ready for Delivery	01/22/2003		
(C) Draft in Assembly/Executive Director Review	01/21/2003		
(C) Draft in Final Drafter Review	01/21/2003		
(C) Bill Draft Text Available Electronically	01/20/2003		
(C) Draft in Input/Proofing	01/20/2003		
(C) Draft to Drafter - Edit Review [CAJ]	01/20/2003		
(C) Draft in Edit	01/17/2003		
(C) Draft in Legal Review	01/15/2003		
(C) Draft Back for Redo	01/15/2003		
(C) Draft in Legal Review	01/14/2003		
(C) Draft to Requester for Review	01/08/2003		
(C) Draft to Requester for Review	01/03/2003		
(C) Draft On Hold	10/22/2002		
(C) Draft Request Received	08/27/2002		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Olson	Alan	
Drafter	Petes	Greg	
Primary Sponsor	Olson	Alan	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Environmental Protection		Simple	ENVP

Additional Bill Information

Probable Fiscal Note: Yes

Preintroduction Required: N

Session Law Ch. Number: 361

DEADLINE

Category: General Bills

Transmittal Date: 02/28/2003

Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 16-APR-03

HOUSE BILL NO. 437
INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES COMPLIANCE WITH THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR WATER QUALITY LAWS OR A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT MUST INCLUDE AN ACTION FOR INJUNCTION AGAINST THE PARTY TO WHOM THE PERMIT OR CERTIFICATE WAS ISSUED; PROVIDING THAT ANY TIME REQUIREMENT UNDER A PERMIT OR CERTIFICATE IS EXTENDED BY THE DURATION OF THE INJUNCTION; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF A PERMIT UNDER THE WATER QUALITY LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE PERMITTED ACTIVITY OR ACTIVITY AUTHORIZED IN THE CERTIFICATE WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT A PERSON MAY NOT CONDUCT INVESTIGATIONS OR REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES ON ANY SITE THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-2-211, 75-5-101, 75-5-102, 75-5-401, 75-5-403, 75-5-614, 75-7-102, 75-10-202, 75-10-402, 75-10-703, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102, 75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-301, 82-4-402, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Article II, section 3, of the Montana Constitution enumerates certain inalienable individual rights, including the right to a clean and healthful environment, the right of pursuing life's basic necessities, the right of enjoying and defending an individual's life and liberty, the right of acquiring, possessing, and protecting property, and the right of seeking individual safety, health, and happiness in all lawful ways; and

WHEREAS, the constitutionally enumerated rights are by their very nature bound to result in competing

interests in specific fact situations; and

WHEREAS, Article IX, section 1, of the Montana Constitution provides that the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations and directs the Legislature to provide for the administration and enforcement of this duty and also directs the Legislature to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, the Legislature has reviewed the intent of the framers of the 1972 Montana Constitution as evidenced in the verbatim transcripts of the constitutional convention; and

WHEREAS, there is no indication that one enumerated inalienable right is intended to supersede other inalienable rights, including the right to use property in all lawful means; and

WHEREAS, the Legislature, mindful of its constitutional obligation to provide for the administration and enforcement of the constitution, has enacted a comprehensive set of laws to accomplish the goals of the constitution, including the Montana Clean Indoor Air Act of 1979, Title 50, chapter 40, part 1, MCA; the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA; the Clean Air Act of Montana, Title 75, chapter 2, parts 1 through 4, MCA; water quality laws, Title 75, chapter 5, MCA; The Natural Streambed and Land Preservation Act of 1975, Title 75, chapter 7, part 1, MCA; The Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA; The Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA; the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, MCA; the Montana Megalandfill Siting Act, sections 75-10-901 through 75-10-945, MCA; the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, Title 75, chapter 11, part 2, MCA; the Montana Underground Storage Tank Act, Title 75, chapter 11, part 5, MCA; the Montana Major Facility Siting Act, Title 75, chapter 20, MCA; the Open-Space Land and Voluntary Conservation Easement Act, Title 76, chapter 6, MCA; the Environmental Control Easement Act, Title 76, chapter 7, MCA; The Strip and Underground Mine Siting Act, Title 82, chapter 4, part 1, MCA; The Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA; The Opencut Mining Act, Title 82, chapter 4, part 4, MCA; and The Nongame and Endangered Species Conservation Act, Title 87, chapter 5, part 1, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-40-102, MCA, is amended to read:

"50-40-102. Purpose Findings -- purpose. The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke."

Section 2. Section 75-1-102, MCA, is amended to read:

"75-1-102. Purpose Findings -- purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The legislature finds that compliance with the requirements of parts 1 through 3 of this chapter and the rules adopted to implement parts 1 through 3 of this chapter constitutes compliance with the constitution.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

Section 3. Section 75-1-103, MCA, is amended to read:

"75-1-103. Policy. (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, *recognizing the critical importance of restoring and maintaining environmental quality* to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements

of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property free of undue government regulation;

(e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The implementation of these rights requires the balancing of the competing interests associated with the rights in order to protect the public health, safety, and welfare."

Section 4. Section 75-2-102, MCA, is amended to read:

"75-2-102. Policy Findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. The legislature finds that compliance with the requirements of parts 1 through 4 of this chapter and the rules adopted to implement parts 1 through 4 of this chapter constitutes compliance with the constitution.

(2) ~~It is hereby declared to be~~ the public policy of this state and the purpose of this chapter to achieve and maintain ~~such~~ levels of air quality ~~as that~~ will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the

people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. This policy must be balanced with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.

~~(2)(3)~~ It is also declared that local Local and regional air pollution control programs ~~are to~~ must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

~~(3)(4)~~ To these ends it is the purpose of this chapter to:

- (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
- (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
- (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
- (d) provide a framework within which all values may be balanced in the public interest."

Section 5. Section 75-2-104, MCA, is amended to read:

"75-2-104. Limitations -- personal cause of action unabridged -- injunction for permit challenge -- venue. (1) ~~Nothing in this~~ This chapter shall may not be construed to:

~~(4)(a)~~ grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

~~(2)(b)~~ affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

~~(3)(c)~~ supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

~~(4)(d)~~ abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A challenge to a permit issued pursuant to this chapter must include an action for injunction against the party to whom the permit was issued.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 6. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to

another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the

application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to *act in a timely manner*.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued. The expiration time in this subsection is extended by any time during

which an injunction is in effect pursuant to 75-2-104(2).

(13) Any time requirement contained in a permit must be extended for time during which an injunction is in effect pursuant to 75-2-104(2). (Terminates July 1, 2005--sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air

quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department

shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) Any time requirement contained in a permit must be extended for time during which an injunction is in effect pursuant to 75-2-104(2)."

Section 7. Section 75-5-101, MCA, is amended to read:

"75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution; and

(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2)."

Section 8. Section 75-5-102, MCA, is amended to read:

"75-5-102. Purpose Findings -- purpose -- rights of action not abridged. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution. A purpose of this chapter is to provide

additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of ~~his~~ the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution."

Section 9. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and

water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department

determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) Any time requirement contained in a permit must be extended for time during which an injunction is in effect pursuant to 75-5-614(3)."

Section 10. Section 75-5-403, MCA, is amended to read:

"75-5-403. Denial or modification of permit -- time for review of permit application -- venue for challenging permit issuance. (1) The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board.

(3) An action to challenge the issuance of a permit pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 11. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized -- permit challenge. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would

be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

(3) A challenge to a permit issued pursuant to this chapter must include an action for injunction against the party to whom the permit was issued."

Section 12. Section 75-7-102, MCA, is amended to read:

"75-7-102. Policy Findings -- policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana."

Section 13. Section 75-10-202, MCA, is amended to read:

"75-10-202. Legislative findings and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) It is hereby found and declared that the health and welfare of Montana citizens are being

endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

Section 14. Section 75-10-402, MCA, is amended to read:

"75-10-402. Findings and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Hazardous Waste Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(1)(2) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2)(3) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended."

Section 15. Section 75-10-703, MCA, is amended to read:

"75-10-703. Actions -- general provisions. (1) No An action taken by any a person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may not be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

(3) Subject to 75-10-724, a private party may not bring an action, based upon a release, against a person who is in compliance with an order issued under 75-10-707 or 75-10-711."

Section 16. Section 75-10-706, MCA, is amended to read:

"75-10-706. Purpose -- findings. (1) The purposes of this part are to:

(1)(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2)(b) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(3)(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(3) A person who is not subject to an administrative or judicial order may not conduct any investigation or remedial action on any site that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part meets the constitutional requirements of Article II, section 3, and Article IX of the Montana constitution."

Section 17. Section 75-10-902, MCA, is amended to read:

"75-10-902. Purpose Findings -- purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. The legislature finds that compliance with the requirements of 75-10-901 through 75-10-945 and the rules adopted to implement 75-10-901 through 75-10-945 constitutes compliance with the constitution.

(1)(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2)(3) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, ~~due to~~ because of the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on

the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933."

Section 18. Section 75-11-202, MCA, is amended to read:

"75-11-202. Findings and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(1)(2) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, closure, and inspection require specialized knowledge, training, and experience.

(2)(3) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to provide for permitting, licensing, and inspection activities."

Section 19. Section 75-11-301, MCA, is amended to read:

"75-11-301. Findings and purposes. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(1)(2) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2)(3) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3)(4) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

~~(4)(5)~~ The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. ~~The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.~~

~~(5)(6)~~ The purposes of this part are to:

- (a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;
- (b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;
- (c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and
- (d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases."

Section 20. Section 75-11-502, MCA, is amended to read:

"75-11-502. Findings and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part."

Section 21. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution.

~~(1)~~(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~(3) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

~~(3)~~(4) The legislature also finds that it is the purpose of this chapter to:

- (a) ensure protection of the state's environmental resources, *including but not limited to air, water, animals, plants, and soils;*
- (b) ensure consideration of socioeconomic impacts;
- (c) provide citizens with the opportunity to participate in facility siting decisions; and
- (d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 22. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility -- applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) Any time requirement contained in a certificate must be extended for time during which an injunction is in effect pursuant to 75-20-401(3)."

Section 23. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions -- venue for challenging certificate issuance. (1) Notwithstanding any other law, ~~no~~ a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A challenge to a certificate issued pursuant to this chapter must include an action for injunction against the party to whom the certificate was issued as provided in this chapter.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 24. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board decisions -- injunction. (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A challenge to a certificate issued pursuant to this chapter must include an action for injunction against the party to whom the certificate was issued as provided in this chapter."

Section 25. Section 76-6-102, MCA, is amended to read:

"76-6-102. Findings and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution.

(2) The legislature finds that:

~~(4)~~(a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

~~(2)~~(b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

~~(3)~~(c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

~~(4)~~(d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

~~(5)~~(e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

~~(6)~~(f) the acquisition or designation of interests and rights in real property by certain qualifying private

organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

~~(7)(g)~~ the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

~~(8)(h)~~ the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest."

Section 26. Section 76-7-102, MCA, is amended to read:

"76-7-102. Findings and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Environmental Control Easement Act. The legislature finds that compliance with the requirements of this chapter and the rules adopted to implement this chapter constitutes compliance with the constitution.

~~(1)~~(2) The legislature finds that:

(a) numerous sites throughout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real

property to protect the public health, safety, and welfare and the environment is in the public's interest.

(2)(3) It is the purpose of this chapter to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure that those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment."

Section 27. Section 82-4-102, MCA, is amended to read:

"82-4-102. Policy Findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(1)(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2)(3) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove ~~such~~ those locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state; that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ~~insure~~ ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3)(4) This part is ~~deemed to be~~ an exercise of the general police power to provide for the health and welfare of the people."

Section 28. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy -- findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

~~(1)~~(2) It is the declared policy of this state and its people to:

- (a) maintain and improve the state's clean and healthful environment for present and future generations;
- (b) protect its environmental life-support system from degradation;
- (c) prevent unreasonable degradation of its natural resources;
- (d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;
- (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;
- (f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(, especially as to reclamation of disturbed lands),~~ in order to achieve the ~~aforementioned~~ objectives enumerated in this subsection (2); and
- (g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

~~(2)~~(3) The legislature hereby finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives enumerated in subsection (2), promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that:

- (i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted;
- (ii) ~~that no a permit not~~ be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;
- (iii) ~~that~~ certain other things must be done, ~~that~~ certain remedies ~~are~~ must be available, ~~that and~~ certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, ~~all as more particularly appears in the remaining provisions of this part;~~ and

(iv) ~~that~~ the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part be ~~deemed~~ considered to be an exercise of the authority granted in the Montana constitution, ~~as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ and also be ~~deemed~~ considered to be an exercise of the general police power to provide for the health and welfare of the people."

Section 29. Section 82-4-301, MCA, is amended to read:

"82-4-301. Legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed."

Section 30. Section 82-4-402, MCA, is amended to read:

"82-4-402. Policy Findings and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials

mining. Therefore, it is the purpose of this part:

- (1)(a) to preserve natural resources;
- (2)(b) to aid in the protection of wildlife and aquatic resources;
- (3)(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;
- (4)(d) to protect and perpetuate the taxable value of property through reclamation;
- (5)(e) to protect scenic, scientific, historic, or other unique areas; and
- (6)(f) to promote the health, safety, and general welfare of the people of this state."

Section 31. Section 87-5-103, MCA, is amended to read:

"87-5-103. Legislative findings and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. The legislature finds that compliance with the requirements of this part and the rules adopted to implement this part constitutes compliance with the constitution.

(2) The legislature finds and declares all of the following:

(1)(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ~~insure~~ ensure their perpetuation as members of ecosystems;

(2)(b) that species or subspecies of wildlife indigenous to this state ~~which that~~ may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

(3)(c) that the state should assist in the protection of species or subspecies of wildlife ~~which that~~ are ~~deemed~~ considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless ~~such~~ those actions will assist in preserving or propagating the species or subspecies."

NEW SECTION. **Section 32. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3 must be brought in the county in which the activity that is the subject of the action will occur. If an activity will occur in more than one county, the proceeding may be brought in any of the counties in which the activity will occur.

NEW SECTION. **Section 33. Codification instruction.** [Section 32] is intended to be codified as an

integral part of Title 75, chapter 1, part 1, and the provisions of Title 75, chapter 1, part 1, apply to [section 32].

NEW SECTION. **Section 34. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 35. Applicability.** [This act] applies to causes of action challenging the issuance of a permit or a certificate that are filed on or after [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 12, 2003
at 3:13 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Jim Peterson, Vice Chairman (R)
Rep. Debby Barrett (R)
Rep. Larry Cyr (D)
Rep. Sue Dickenson (D)
Rep. Ron Erickson (D)
Rep. George Everett (R)
Rep. Kim Gillan (D)
Rep. Christopher Harris (D)
Rep. Carol Lambert (R)
Rep. Michael Lange (R)
Rep. Rick Maedje (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. John (Jack) W. Ross (R)
Rep. Scott Sales (R)
Rep. Veronica Small-Eastman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Kathleen Ely, Committee Secretary
Larry Mitchell, Legislative Branch

Video-taped Committee: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society. THE TIME STAMP REPRESENTS ELAPSED TIME.

Committee Business Summary:

Hearing & Date Posted: HB 437, 1/27/2003; HB 436,
1/27/2003
Executive Action: HB 427, DO PASS AS AMENDED, 14-4
HB 436, DO PASS AS AMENDED, 18-0
HB 433, DO PASS, 10-8

HEARING ON HB 437**Opening Statement by Sponsor:**

02:00 REP. OLSON, HD 76 -- Short Title: Implementation of
constitutional provisions on the environment

EXHIBIT(nah31a01)**Proponents' Testimony:**

05:00 SEN. MCCARTHY, SD 29
06:00 Leo Berry, Western Environmental Trade Association
16:00 Jerry Driscoll, Montana AFL-CIO

EXHIBIT(nah31a02)

17:00 REP. GALLUS, HD 35
19:00 Robert Hanson, Montana Farm Bureau
20:00 John Forkan, Montana Building Trades Association
21:00 Don Serba, Pulp and Paperworkers Council
23:00 Russ Ritter, Montanans for Responsible Energy
Development
24:00 Neal Marxer, Smurfit Stone Container Corporation
26:00 Gilda Clancy, Montanans for Responsible Energy
Development

EXHIBIT(nah31a03)

27:00 Robert Pavlovich, International Brotherhood of
Electrical Workers 233
27:00 Nicole Prokop, Holcim
28:00 Nicolai Cocergine, U.F.C.W. Local 4
28:00 Bob Gilbert, Montana Petroleum Marketers
29:00 Keith Allen, Vice President, Montana AFL-CIO,
International Brotherhood of Electrical Workers 233
29:00 Steve Pilcher, Montana Stockgrowers Association
31:00 Cary Hergreberg, Montana Contractors Association
31:00 Jerome Anderson, PPL Montana, Encore Acquisitions
Company
31:00 Tom Figarelli, Forward Montana

EXHIBIT(nah31a04)

32:00 Jim Mockler, Montana Coal Council
32:00 Fred Janicke, Pace Local 8-0491
33:00 Curt Chisholm, Montana Building Industry Association
33:00 Patrick Montalban, Northern Montana Oil and Gas
Association
33:00 Dexter Busby, Montana Refining Company
34:00 Ellen Porter, Louisiana Pacific

HOUSE COMMITTEE ON NATURAL RESOURCES

February 12, 2003

PAGE 3 of 6

34:00 Margaret Morgan, Independent Electrical Contractors
34:00 Ellen Engstedt, Montana Wood Products Association
34:00 Peggy Trenk, Montana Association of Realtors
35:00 Webb Brown, Montana Chamber of Commerce
35:00 Cory Swanson, Plum Creek Timber Company

Opponents' Testimony:

35:00 Mike Barrett

EXHIBIT(nah31a05)

39:00 Mike Cok, Manhattan Rancher, Attorney

EXHIBIT(nah31a06)

43:00 Kim Wilson, Attorney

47:00 Ann Hedges, Montana Environmental Information Center

54:00 Richard Parks, Northern Plains Resource Center

EXHIBIT(nah31a07)

59:00 John Wilson, Montana Trout Unlimited

1:04:00 Steve Gilbert

1:06:00 Al Smith, MTLA

EXHIBIT(nah31a08)

1:08:00 Sherm Janke, Sierra Club

1:09:00 Janet Ellis, Montana Audubon Society

EXHIBIT(nah31a09)

Informational Testimony: None.

Questions from Committee Members and Responses:

1:10:00

Closing by Sponsor:

1:44:00

5:00 p.m. Break

5:07 p.m. Resume

HEARING ON HB 436

Opening Statement by Sponsor:

1:54:00 REP. OLSON, HD 76 -- Short Title: Exempt certain leases
subject to permitting from MEPA review

Proponents' Testimony:

1:56:00 Jim Mockler, Montana Coal Council

2:01:00 Gail Abercrombie, Executive Director, Montana

2:01:00 Cary Hegreberg, Montana Contractors Association

Opponents' Testimony:

2:02:00 Janet Ellis, Montana Audubon Society

2:04:00 Jeff Barber, Montana Environmental Information Center

2:07:00 Sherm Janke, Sierra Club

030212NAH_HM1

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

EXHIBIT 1
DATE 2-12-03
HB 437

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

EXHIBIT 2
DATE 2-12-03
HB 437

This exhibit is a
Petition.

Over 3204 signatures.

If you wish to view it,
it is on file at the:

Montana Historical Society,

225 N. Roberts St.

Helena, MT 59601

406-444-4774

Madam Chairman, members of the Committee, for the record my name is Gilda Clancy. I stand before you today supporting HB 437 on behalf of Montanans for Responsible Energy Development or MRED. MRED is a statewide grassroots organization formed by former Senator Mack Cole. MRED seeks to bring citizens together on a common goal: to encourage and support responsible natural resource development to grow the economy of Montana.

Article II, Section 3 of the Montana State Constitution reads, "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities".

Madam Chair, members of the Committee, I would like to state again, "Our inalienable rights include the right to a clean and healthful environment and the rights of pursuing life's basic necessities". HB 437 brings balance to the two as well as Article IX of the Constitution.

In this bill you will also find language added to regulating sections of the law, which states, "This policy must be balanced with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in lawful ways.

We do support a clean and healthful environment in our State, however, we believe all the components of the Constitution are equally important. One should not be held in higher regard than the other. The need for this bill is apparent due to the large volume of lawsuits property owners are filing in order to defend their own Constitutional rights.

We believe this bill upholds and strengthens our Montana Constitution in every way and commend Rep. Olson for bringing it forward. This bill is a good, level-headed approach. On behalf of MRED, please vote in favor of HB 437.

HB 437

Madame Chairman, members of the committee, for the record, my name is Nate Zander. I am an Engineering student at Montana State University. I rise today in support of HB 437.

As I near graduation, fellow students and myself often speak of where we would like to find employment. The overwhelming consensus is to try and find a job within Montana; unfortunately this desire is lessened by the lack of good paying engineering jobs available in the state. In 2001, 60 students graduated from the College of Engineering, with a bachelor's degree. Only 13 students stayed in Montana. Those who did earned an average annual income of \$33,383, compared to the \$45,667 made by those who left the state. Such a trend has become increasingly attractive as tuition rises, and students fall into more debt. Fortunately, we have the resources necessary to halt this trend.

Research programs, relevant to technological progress and economic development, continue to grow within the College of Engineering, creating a balanced mix of cutting edge research and applied projects. Federal agencies, the State of Montana, and private industry sponsor research and projects. Industrial sponsors range from Fortune 500 companies to small Montana businesses. Thanks to Montana's human resource capabilities, this activity has been made possible. With resources like these available why don't businesses relocate here in Montana? The answer is very simple, while our state produces top-notch students, we don't have a business friendly atmosphere. For far too long we have left the door open to anti-business practices, creating an environment that does not attract the type of growth necessary for our economy to expand. It is time to close that door and open one of development and hope that provides economic viability.

HB 437 helps open that door, by providing a more stable legal climate. The bill is absolutely critical in ensuring the "clean and healthful" constitutional provision is not used to prevent job growth, while still protecting Montana's environment.

Thank you for your time and I urge you to support HB 437.

Exhibit:

5

This exhibit is a collection
abstract- memos
from Mike Barrett. They are of
odd shaped pieces of photocopies
and original notes, which are
difficult to scan individually.

If you wish to view it, it is on file at
the

Montana Historical Society
225 North Roberts Street
Helena, MT 59701
(406) 444-4774

Written Testimony In Opposition to House Bill 437, Sections 15 and 16

Sections 15 and 16 of House Bill 437 amend Montana's Comprehensive Environmental Cleanup and Responsibility Act. This Act, in general, permits and requires the State in certain situations to require those who release hazardous waste or contaminants to take remedial action.

Montana businesses, ranchers and property owners now also have a right to require polluters to cleanup contamination released onto private property by the polluter.

Sections 15 and 16 of House Bill 437 eliminates the private property rights of Montana's farmers, ranchers and businesses. If enacted, it would prohibit any small business from taking action to hold the polluter responsible for the costs of cleaning up the pollution. In fact, it would even prohibit private landowners from doing an investigation into the extent of the pollution of his own property. Ironically, this immunity would only apply to polluters who have polluted to such an extent that the pollution site became subject to State action. In other words, it would immunize the worst polluters, at the most toxic sites.

Not only would it be bad policy to reward such corporate irresponsibility, but it would also be in direct contradiction of Montana's Constitution regarding the sanctity of private property rights. It provides:

All persons are born free and have certain inalienable rights. They include . . . the rights of . . . acquiring, possessing and protecting property.

Montana Constitution, Article II, Section 3.

Instead of passing legislation which would relieve polluters from the effects of dumping their hazardous wastes and contaminants on the property of others, this Committee should enact legislation that requires any entity that releases hazardous wastes or contaminants onto private property of any business, farmer, rancher or citizen of Montana to be legally responsible to that party for costs of cleaning up the mess, to the extent science allows. That would be legislation that supports Montana business and the rights of property holders.

In sum, Sections 15 and 16 of this proposed bill benefit only a small number of large corporate polluters who do not even reside in this State and benefits no one in Montana.

Thank you for your consideration.



Michael D. Cook
3300 Harper Pucket Road
Bozeman, MT 59718

EXHIBIT 7
DATE 2-12-03
HB 437

NORTHERN PLAINS
RESOURCE COUNCIL

TESTIMONY OF RICHARD PARKS

PO BOX 196

GARDINER, MT 59030

ON BEHALF OF NORTHERN PLAINS RESOURCE COUNCIL AND BEAR CREEK COUNCIL
OPPOSING HB 437

Madam Chair, members of the Committee, for the record my name is Richard Parks. I own and operate a sporting goods store in Gardiner Montana. I appear today on behalf of myself, Northern Plains Resource Council and our local organization, Bear Creek Council. Thank you for the opportunity to testify on this important matter.

Northern Plains is a grassroots conservation and family agriculture group working to help Montana citizens find the right balance between the environment and economic growth. With it's more than 3000 members across the state, I urge you to vote no on HB 437.

I call your attention to the several places in the bill where any one wishing to appeal a permit decision must do so by filing, not just a legal action challenging the state's decision, but an injunction. There are a number of things wrong with this:

1. I am not a lawyer but I think this requirement misunderstands the purpose of an injunction. An injunction asks the court to prevent some immediate harm. If a permit has not been issued there is not yet harm for which an injunction is the right relief. For example - a few years ago the Stillwater Mine was applying for permits to expand its Stillwater side and open a second mine on the East Boulder. During this process it became clear to us that, for different reasons, neither of these permits were going to protect water quality in these drainages. Our beef was with the state, not the company so there was nothing to make into the point of an injunction. Our permit appeals however did give the company incentive to negotiate a Good Neighbor Agreement with us. This agreement is a legally binding contract between Northern Plains, two of our affiliates and the Stillwater Mining Company that results in higher water quality protection and community benefits. Had we been required to file an injunction the climate for negotiation would have been poisoned. As it is we have a win-win result that provides benefits for both the company and the community. All that is achieved with premature filing of injunctions is to gum up the process which I can't see is in anybody's interest - not the citizen's, not the state's, and not the applicant for a permit.
2. It is apparent that the originators of this bill think that it will cut only one way. Ask yourself however if your

2401 Montana Avenue, Suite 200, Billings, MT 59101

Tel: 406.248.1154 Fax: 406.248.2110 Email: Info@northernplains.org www.northernplains.org

3. responsibility as a legislator should be limited to a bet on the short term outcome of a piece of legislation. Is it not possible, even probable, that sooner or later the state will make a permit decision that is unacceptable to the applicant? Are every one of you willing to bet that the state will never make an erroneous decision in regard to a permit you or one of your constituents might seek, or impacts you directly?
4. Finally, HB 437 would relegate justice to those rich enough to pay for it. Those who file for an injunction in permit cases are required to post a bond which will probably be forfeited unless the plaintiff prevails. This is profoundly unjust because it requires citizens, who may already be facing real damage, to double it by risking the bond as well. In effect only the rich can have justice. All Montanans should have equal access to the courts for redress of damages. Justice demands that the people of Montana who have reason to believe that a permit decision was made contrary to evidence of consequences or in violation of appropriate process be able to challenge that decision without betting the house on the outcome.

There are numerous other problems with this bill addressed by other witnesses. Because requiring an injunction for appealing a permit would add an unnecessary, encumbering, and expensive burden to all sides involved, and because this bill would subvert democracy by assigning justice to only those rich enough to pay for it your conclusion must be to reject HB-437.

I thank you again for the opportunity to appear.

EXHIBIT 8
2-12-03
HB 437

Law Offices of
McGarvey, Heberling, Sullivan & McGarvey, P.C.

Dale L. McGarvey

Jon L. Heberling

Roger M. Sullivan, Jr.

Allan M. McGarvey

John F. Lacey

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Helena, Montana
59904-5399

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February 10, 2003

Email: dmcgarvey@mcgarveylaw.com
jheberling@mcgarveylaw.com
amcgarvey@mcgarveylaw.com
rsullivan@mcgarveylaw.com
jlacey@mcgarveylaw.com

Montana 2003 Legislature
House Natural Resources Committee
c/o Cindy Younkin, Chair
P.O. Box 201706
Helena, MT 59620-1706

Re: HB 437, Implementation of constitutional provisions on the environment

Dear Committee Members:

This letter is intended to address concerns related to certain portions of HB 437, which we understand this Committee to be considering at a February 12, 2003, 3:00 pm hearing. We regret that we are unable to appear in person at the hearing, and we appreciate your consideration of our concerns via this letter in place of our presence.

This office represent hundreds of individuals who have been harmed in Libby by the actions of W.R. Grace. The Libby residents we represent have already suffered and will continue for many years to suffer horrible, asbestos-related physical, property, and economic losses as a result of W.R. Grace's utter disregard for the individual and environmental welfare of Libby.

As you are no doubt aware, multi-level federal and state efforts to assist Libby residents and clean-up the area are ongoing, albeit with limited potential to fully cure the damage. Many of those injured still rely predominantly on the courts to attempt to fill in the gaps and recover a token of what they have lost, an endeavor itself in which they have been severely frustrated due to W.R. Grace's bankruptcy filing. We fear that parts of HB 437 would pose a potentially catastrophic threat to these individuals' rights and increase the likelihood that wrongdoers such as W.R. Grace would in the future tarnish Montana without responsibility for those it harms, and the folks of Montana would be left without a remedy.

In particular, Sections 15 and 16 of HB 437 would add language to Montana law that appears so loosely worded and overreaching that it would extend far beyond the

February 10, 2003

Page 2

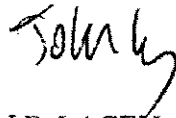
strictly environmental impact that appears to be the intent of HB 437. For example, the current environmental cleanup in Libby, overseen by the EPA against W.R. Grace, could be construed as a remedial or emergency action sufficient pursuant to the new language of §75-10-703(3), MCA, (HB 437, Sec. 15) to foreclose private Libby citizens from pursuing W.R. Grace for the enormous medical expenses arising from the asbestos that it handled so irresponsibly for so many years. Likewise, the new language of §75-10-706(3), MCA (HB 437, Sec. 16), could be construed to undermine the very sunlight that a few years ago finally exposed the tragic history of W.R. Grace's pattern of conduct and concealment in Libby.

We trust that you agree that any actions, legislative or otherwise, that would serve to further take away the rights on which Libby residents rely would be abhorrent public policy and must be rejected. In general, the constitutional right of access to Montana's courts must remain inviolate, not just to protect the environment, but also to allow Montana residents to protect themselves from the personal harm that environmental wrongdoers can impose. HB 437 reaches too far in limiting those rights. We urge you to reject or at least dramatically revise it.

Thank you, on behalf of our Libby clients as well as all Montana citizens, for your consideration of our concerns.

Yours sincerely,

McGARVEY, HEBERLING, SULLIVAN
& McGARVEY

A handwritten signature in dark ink, appearing to read "John F. Lacey", is written over the printed name.

JOHN F. LACEY

HB 437

Madame Chair, Members of the Committee:

My name is Ronni Flannery. I'm a practicing attorney in Missoula.

I am a member of the board of directors of Montana Audubon.

And my remarks here today are made on behalf of Montana Audubon.

Montana Audubon opposes HB 437.

In the interest of being brief, I will simply state that Montana Audubon has the same concerns that have been articulated here today.

In addition, I would like to make a few comments on the provisions of this bill dealing with venue.

HB 437 would change existing law to require that actions brought to challenge the issuance of certain types of permits to must be brought in the county in which the permitted activity will occur.

This is a significant departure from existing state law. Under existing law, the proper place of trial for an action against the state is the county in which the claim arose **or in Lewis and Clark County. In an action brought by a resident of the state, the county of the plaintiff's residence is also a proper place of trial.**

There are three principal reasons why the venue changes proposed by this bill are not a good idea.

- 1) The venue provisions established by the Montana legislature years ago are working. The courts in Lewis and Clark County have developed significant expertise to deal with the fairly-specialized administrative law issues that these sorts of cases involve. Forcing district court judges throughout the state to get up to speed on the fairly atypical concepts of administrative law may well detract from other work of the courts and lead to inefficiency. Less familiarity with these sorts of cases may also result in more appeals. In addition, current law allows parties to challenge venue (and seek a change in venue) if they can show that they would be denied a fair hearing in the court where the case was filed.
- 2) Requiring that all permit challenges be brought within the county where the permitted activity will occur translates into additional costs to the state. These additional costs could be quite substantial. Government lawyers could be forced to traverse the state to defend lawsuits. The state will have to pay for additional travel costs associated with getting

HOUSE OF REPRESENTATIVES

Roll Call NATURAL RESOURCES COMMITTEE

DATE 2-12-03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. CINDY YOUNKIN, CHAIRMAN	✓		
REP. JIM PETERSON, VICE CHAIR, MAJORITY	✓		
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY	✓		
REP. DEBBY BARRETT	✓		
REP. LARRY CYR	✓		
REP. SUE DICKENSON	✓		
REP. RON ERICKSON	✓		
REP. GEORGE EVERETT	✓		
REP. KIM GILLAN	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. CAROL LAMBERT	✓		
REP. MIKE LANGE	✓		
REP. RICK MAEDJE	✓		
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS	✓		
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN	✓		

Montana House of Representatives
Visitors Register

NATURAL RESOURCES COMMITTEE

Date 2/12/03

Bill No. HB 437 Sponsor(s) A Olson

PLEASE PRINT

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Sam Stephenson Jr	LABORERS 1334-2	X		
Jack Fisher	IBEW 233	X		
Al Kingston	Self	X		
Steve Gilbert	Self		X	
Manuel Herrera	IBEW 233	X		
Bob Foley	IBEW 233	X		
Peter Busby	Mont. Ref. Co.	X		
Kim Hanco	LABORERS #1334-2	X		
Mark Drey	LABORERS #1334-2	X		
Jeff Morris	LABORERS #1334-2	X		
John Smith	MT State Bldg Trans	X		
Bronie Anderson	PPL-MT.	X		
Bronie Anderson	BARONZ ACQUISITION COMPANY	X		
Al Smith	MTLA		X	
Al Wilson	L.U. 41 Butte MT.	X		
William Duffield	MACTEC Coal Co.	X		
Angela Giacaro	MT Mining Assn	X		
Jim Currell	AFL-CIO	X		
Steve Fisher	MT State Bldg Trans	X		
WEBB BROWN	MONTANA CHAMBER	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Ellen Porter Louisiana Pacific X

Cal Loomis ~~Self~~ Self X

Jim Barngrover Montana Petroleum Assn X

Gail Abernethy

X

Montana House of Representatives
Visitors Register

NATURAL RESOURCES COMMITTEE

Date 2/12/03

Bill No. HB 437 Sponsor(s) A Olson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Don Quander	SSCC & Holcim	✓		
Neal Marxer	Smurfit-Stone Const Corp	✓		
Nicole Prokop	Holcim	✓		
Robert Hanson	Mt Fanny Banar	✓		
Michael Cook	Self		✓	
Richard Prades	UPRC		✓	
GILDA CLANCY	MONTANANS FOR RESP. ENERGY DEV	✓		
ELLEN EUGSTEN	MT WOOD PRODUCTS	✓		
JOHN DANKAN	MT BLAG TRAKES	✓		
FRED JAUVICKE	PALE LOCAL 8-0991	✓		
Mike Barrett	stf.; artists @ mt hqnc.	33 ~	✓ 34	✓ 33
Anne Hedger	MEIK		✓	
Dani S. Ingram	Westwoodland Co	✓		
Jim Meekler	MTGA/Council	✓		
Jay Kershner	Self	✓		
DON SELPH	Pulp/Paperworkers Council	✓		
JOHN RESKO	UA LOCAL #41	✓		
Budd Cobb	UA Local #41	✓		
ROBERT GAUGHNIGHT	IBEW 233	X		
Don Anderson	IBEW 44	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Russ Rutter
SHEPHERD JANKE
MICHELE REINHART
Cary Hegreberg
Cary Swanson

MR2D
SIERRA CLUB
NORTHERN PLAINS
CONTRACTORS
Plum Creek

✓
✓
✓
X OPPOSED.

Montana House of Representatives
Visitors Register

NATURAL RESOURCES COMMITTEE

Date 2/12/03

Bill No. HB 437 Sponsor(s) A Olson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
BARBARA BROBERG P O BOX 1535-59426	WIFE WOMEN INVOLVED in FARM ECONOMICS	X		
J. W. LYNCH	FARM LABORERS LOCAL 1334	X		
KON SARGAN	SHEET METAL 103	X		
Jim Ryan	SHEET METAL #103	X		
Janet Ellis	MT Audubon		X	
Debra Ball-Grip	Local #1334-Laborers	X		
Randy Jones	LOCAL 1334-2 LABORERS	X		
Keith Allen	IBEW 233	X		
Steve Klalsh	Montana Resources	X		
John Bush	IBEW 233	X		
Peggy Trenu	MT. Assoc. of Realtors	X		
Bob Gilbert	MT Patroleum MARKETERS ASSOCIATION	X		
Ginger Winston	IAMAW Machinists Union District 86	X		
ROB FISHER	IBEW 233	X		
Duane Mellingner	IBEW 233	X		
EARL SALLEY	ILPE LOCAL 400	X		
WILLIAM KRUG 1163 W. Steele-Butte	IBEW 233	X		
DENNIS GEORG Butte	IBEW 233	X		
QUINCY FELDZ	LABORER 1334-2	X		

Stanne-Marie Soucieux MCV
Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Margaret Morgan Independent Electrical Contractor X
C. J. CHRISTENSEN MT BUILDERS ASSOC X
Ed Kelly OPER ENG. 440 NMCA X
Patrick M. Audubon

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN JIM PETERSON**, on February 19, 2003 at 3:07 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Jim Peterson, Vice Chairman (R)
Rep. Debby Barrett (R)
Rep. Larry Cyr (D)
Rep. Sue Dickenson (D)
Rep. Ron Erickson (D)
Rep. George Everett (R)
Rep. Kim Gillan (D)
Rep. Christopher Harris (D)
Rep. Carol Lambert (R)
Rep. Michael Lange (R)
Rep. Rick Maedje (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. John (Jack) W. Ross (R)
Rep. Scott Sales (R)
Rep. Veronica Small-Eastman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Kathleen Ely, Committee Secretary
Larry Mitchell, Legislative Branch

Video-taped Committee: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society. THE TIME STAMP REPRESENTS ELAPSED TIME.

Committee Business Summary:

Hearing & Date Posted: HB 545, 2/10/2003; HB 533,
2/10/2003; HB 626, 2/17/2003
Executive Action: HB 437, POSTPONED
HB 370, DO PASS AS AMENDED, 12-6
HB 527, DO PASS AS AMENDED, 16-2
HB 467, TABLED
HB 626, TABLED
HB 545, TABLED

HEARING ON HB 545

Opening Statement by Sponsor:

02:00 REP. HAINES, HD 63 -- Short Title: Statutory water
quality permit fees for suction dredge operations.

Proponents' Testimony:

07:00 Angela Janacaro, Montana Mining Association
10:00 Gary Hall, Northwest Miners Gold Prospectors
EXHIBIT(nah37a01)
12:00 Charlie Richmond
16:00 Allen McClintock
20:00 Gary Hall, Flathead County Commissioner
22:00 Ron Grammill, Gold Prospectors Association of America,
Bozeman and Lincoln Chapters
28:00 Harm Toren, Northwest Montana Gold Prospectors
28:00 Maurice Johnson, Northwest Montana Gold Prospectors
29:00 Virgil Roper, Northwest Montana Gold Prospectors
29:00 William E. Gross, Kalispell
30:00 Ted Antonoli, Missoula Chapter of the Montana Mining
Association
31:00 Trenton L. Axetell
34:00 Charles Kins, Northwest Montana Gold Prospectors

Opponents' Testimony:

34:00 John Wilson, Montana Trout Unlimited
40:00 Richard Parks, Outfitter

EXHIBIT(nah37a02)

41:00 Jeff Barber, Montana Environmental Information Center
41:00 Robert Throssell, Montana Wildlife Federation
42:00 Robin Cunningham, Fishing Outfitters Association of
Montana
43:00 Cody Ferguson, Northern Plains Resource Council

Informational Testimony:

None.

Questions from Committee Members and Responses:

43:00

Proponents' Testimony:

2:24:00 John Wilson, Montana Trout Unlimited
2:28:00 Robin Cunningham, Fishing Outfitters Association of
Montana
2:30:00 Larry Peterman, Department of Fish, Wildlife and Parks

Opponents' Testimony:

2:31:00 John Bloomquist, Montana Stockgrowers Association
2:40:00 John Youngberg, Montana Farm Bureau
2:42:00 Michael Murphy, Montana Water Resources Users
Association

Informational Testimony:

2:43:00 Curt Martin, Department of Natural Resources

Questions from Committee Members and Responses:

2:45:00

Closing by Sponsor:

2:58:00

6:06 p.m. Break

6:17 p.m. Resume

EXECUTIVE ACTION ON HB 437

Motion: REP. LANGE moved that HB 437 DO PASS.

Motion: REP. LANGE moved that HB 437 BE AMENDED.

EXHIBIT(nah37a10)

EXHIBIT(nah37a11)

Discussion:

3:13:00

Motion/Vote: REP. GUTSCHE moved that HB 437 BE POSTPONED AND
THAT A GREY BILL BE PREPARED. Motion carried 10-8 with REPS.
BARRETT, EVERETT, LAMBERT, LANGE, MAEDJE, PETERSON, ROSS, and
YOUNKIN voting no by roll call vote.

EXECUTIVE ACTION ON HB 370

Motion: REP. PETERSON moved that HB 370 DO PASS.

Motion: REP. YOUNKIN moved that HB 370 BE AMENDED.

EXHIBIT(nah37a12)



Exhibit:

10

**This exhibit is a collection of several
assorted documents
which cannot be scanned because they
exceed
the maximum amount that can be scanned.**

**If you wish to view this exhibit it is on file
at the**

**Montana Historical Society
225 North Roberts Street
Helena, MT 59701
(406) 444-4774**

ATTORNEYS AT LAW

2-19-03

HB 437

G. ANDREW ADAMEK
KIMBERLY A. BEATTY
LEO BERRY

BRAND G. BOYAR
R. STEPHEN BROWNING
KATHARINE S. DONNELLEY
MARK D. ETOHART
OLIVER H. GOE
AIMEE GRMOLJEZ
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SARA B. STANTON
MARK R. TAYLOR
KIMBERLY L. TOWE
STEVEN T. WADE
LEO S. WARD

MEMORANDUM

TO: Representative Alan Olson
FROM: Steven T. Wade
DATE: February 19, 2003
RE: Amendments to HB 437

Below is a summary by subject matter of the amendments prepared for House Bill 437.

Legislative Intent – Constitutional Language (Amendment Nos. 10, 12, 15, 22, 25, 28, 30, 33, 36, 38, 40, 42, 44, 50, 52, 54, 56, 59, 62, and 65)

The amendments change the provisions of the bill that say that "The legislature finds that compliance with this part, constitutes compliance with the constitution." The quoted language will be struck from the bill, and replaced with the underlined language below. The bill will now read:

The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the [the following act]. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

The amendments also clarify that when various constitutional rights are being balanced, it is the legislature and the courts who do the balancing, and not a state agency. (Amendment 13,16)

Venue (Amendment No.8, 23, 26, 31, 57, 60, 63)

The amendments insert a venue provision for judicial challenges to permits or licenses issued pursuant to Titles 75 or 82 into the Montana Administrative Procedures Act (MAPA). This is intended to cover those permitting challenges that may not have a specific venue statute, but would be brought under MAPA. In addition, the amendments add venue provisions to MEPA challenges, and other acts identified below. The amendments also remove, at the request of the department, the

venue provision from those acts like Water Quality that do not have statutorily provided judicial review proceedings.

Injunctions (Amendment Nos. 17, 18, 45, 46, 47, 48, 60, 63)

Clarifies that when a **judicial** challenge is brought **by a party other than the permit applicant or holder**, that a preliminary injunction must be obtained against the permit holder or applicant, **unless otherwise agreed to by the permit applicant or holder**.

Air Quality (Amendment Nos. 19, 20)

Removes the automatic staying of time frames in a permit while an injunction is in place. This is in response to DEQ's concern that it could jeopardize its PSD program. It is anticipated that a judge could still provide for such in an order.

Superfund (CECRA) (Amendment Nos. 31, 34)

The amendments remove the limitation on suit provision that opponents objected to in Section 15. In addition, it removes "investigation" from Section 16, making it clear that a private party cannot do "remediation" unless DEQ provides authorization.

Other Acts (Amendment Nos. 26, 31, 57, 60, 63)

Some acts were missed in the initial drafting of the bill. As a result the amendments add the venue/injunctive provisions to the following acts.

Natural Streambed and Land Preservation Act
Hazardous Waste Management Facilities Laws
Coal and Uranium Mine Reclamation Laws
Metal Mine Reclamation Laws

HOUSE OF REPRESENTATIVES

Roll Call NATURAL RESOURCES COMMITTEE

DATE 2-19-03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. CINDY YOUNKIN, CHAIRMAN	✓		
REP. JIM PETERSON, VICE CHAIR, MAJORITY	✓		
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY	✓		
REP. DEBBY BARRETT	✓		
REP. LARRY CYR	✓		
REP. SUE DICKENSON	✓		
REP. RON ERICKSON	✓		
REP. GEORGE EVERETT	✓		
REP. KIM GILLAN			
REP. CHRISTOPHER HARRIS	✓		
REP. CAROL LAMBERT	✓		
REP. MIKE LANGE			
REP. RICK MAEDJE	✓		
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS	✓		
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN	✓		

HOUSE OF REPRESENTATIVES

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE 2-19-03 BILL NO 437 MOTION NO. 1

MOTION: GUTSCHE : TO POSTPONE AND HAVE A

GREY BILL PREPARED, PASSED 10-8

NAME	AYE	NO	ABSENTEE
REP. JIM PETERSON, VICE CHAIR, MAJORITY		✓	
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY	✓		
REP. DEBBY BARRETT		✓	
REP. LARRY CYR	✓		
REP. SUE DICKENSON	✓		
REP. GEORGE EVERETT		ⓧ	
REP. KIM GILLAN	ⓧ		
REP. CHRISTOPHER HARRIS	✓		
REP. CAROL LAMBERT		✓	
REP. MIKE LANGE		✓	
REP. RICK MAEDJE		✓	
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS		✓	
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN	✓		
REP. RON ERICKSON	✓		
REP. CINDY YOUNKIN, CHAIRMAN		✓	

10

8

s:\Nat. Res. Roll Call Vote 2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN JIM PETERSON**, on February 21, 2003 at 3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Gail Gutsche, Vice Chairman (D)
Rep. Jim Peterson, Vice Chairman (R)
Rep. Debby Barrett (R)
Rep. Larry Cyr (D)
Rep. Sue Dickenson (D)
Rep. Ron Erickson (D)
Rep. George Everett (R)
Rep. Christopher Harris (D)
Rep. Carol Lambert (R)
Rep. Michael Lange (R)
Rep. Rick Maedje (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. John (Jack) W. Ross (R)
Rep. Scott Sales (R)
Rep. Veronica Small-Eastman (D)

Members Excused: Rep. Cindy Younkin, Chairman (R)
Rep. Kim Gillan (D)

Members Absent: None.

Staff Present: Kathleen Ely, Committee Secretary
Larry Mitchell, Legislative Branch

Video-taped Committee: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society. THE TIME STAMP REPRESENTS ELAPSED TIME.

Committee Business Summary:

Hearing & Date Posted: HB 574, 2/13/2003; HB 581,
2/13/2003; HB 584, 2/17/2003; HB
673, 2/17/2003
Executive Action: HB 113, DO PASS, 10-8
HB 437, DO PASS AS AMENDED, 12-6
HB 467, DO PASS AS AMENDED, 10-8
HB 533, TABLED
HB 574, DO PASS, 18-0
HB 584, DO PASS, 18-0
HB 605, TABLED
HB 673, DO PASS AS AMENDED, 10-8

HEARING ON HB 574

Opening Statement by Sponsor:

02:00 REP. LEHMAN, HD 87 -- Short Title: Revise authority to
regulate burning on certain property.

Proponents' Testimony:

08:00 Leonard Lenby, Volunteer Fire Chief, Volunteer
Firefighters Association
10:00 John Semple, Montana Fire Alliance

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

11:00

Closing by Sponsor:

13:00

HEARING ON HB 584

Opening Statement by Sponsor:

15:00 REP. BARRETT, HD 34 -- Short Title: Eliminate
termination date for controlled allocation of liability
act.

Proponents' Testimony:

17:00 Sandi Olsen, Department of Environmental Quality
EXHIBIT(nah39a01)
19:00 Jennifer Fanning, Montana Environmental Information
Center

Opponents' Testimony: None.

1:45:00 Nancy Schlepp, Montana Farm Bureau Federations

1:47:00 John Semple, Montana Cattlemen Association

Opponents' Testimony:

1:47:00 Jeff Hagener, Department of Fish, Wildlife and Parks

EXHIBIT (nah39a05)

1:52:00 Stan Bradshaw, Trout Unlimited

Informational Testimony: None.

Questions from Committee Members and Responses:

1:59:00

Closing by Sponsor:

2:14:00

5:18 p.m. Break

5:30 p.m. Resume

CHAIRMAN YOUNKIN present.

EXECUTIVE ACTION ON HB 574

Motion: REP. PETERSON moved that HB 574 DO PASS.

Motion: REP. MAEDJE moved that HB 574 BE AMENDED TO INSERT THE WORD "ORAL" BEFORE PERMISSION ON LINES 6, 16 AND 23. Motion failed by voice vote. CHAIRMAN YOUNKIN did not delineate the no votes on the voice vote.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. NEWMAN moved THAT HB 574 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 584

Motion/Vote: REP. BARRETT moved that HB 584 DO PASS. Motion carried unanimously by voice vote.

Motion/Vote: REP. ERICKSON moved THAT HB 584 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON HB 437

Motion: REP. LANGE moved that HB 437 DO PASS.

Motion: REP. LANGE moved that HB 437 BE AMENDED.

Discussion:

2:40:00

Vote: Motion carried 12-6 with REPS. DICKENSON, ERICKSON, GILLAN, GUTSCHE, HARRIS, and SMALL-EASTMAN voting no by roll call vote.

Motion/Vote: REP. LAMBERT moved that HB 437 DO PASS AS AMENDED. Motion carried 12-6 with REPS. DICKENSON, ERICKSON, GILLAN, GUTSCHE, HARRIS, and SMALL-EASTMAN voting no by roll call vote.

Motion/Vote: REP. PETERSON moved HB 437 be reconsidered. Motion carried with REPS. ERICKSON and GUTSCHE voting no by voice vote.

Motion/Vote: REP. YOUNKIN moved that HB 437 BE AMENDED. Motion carried 12-6 with REPS. DICKENSON, ERICKSON, GILLAN, GUTSCHE, HARRIS, and SMALL-EASTMAN voting no by roll call vote. CHAIRMAN YOUNKIN ruled that the roll call vote on Motion No. 2 would be used as the source for the vote.

EXECUTIVE ACTION ON HB 533

Motion: REP. LAMBERT moved that HB 533 DO PASS.

Discussion:

3:01:00

Vote: Motion HB 533 failed 8-10 with REPS. BARRETT, EVERETT, LAMBERT, LANGE, MAEDJE, PETERSON, ROSS, and YOUNKIN voting aye.

Motion/Vote: REP. ERICKSON moved that the vote on HB 533 BE REVERSED and TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 605

Motion: REP. GILLAN moved that HB 605 DO PASS.

Discussion:

3:19:00

Motion/Vote: REP. PETERSON moved that HB 605 BE TABLED. Motion carried 14-4 with REPS. ERICKSON, GILLAN, GUTSCHE, and SMALL-EASTMAN voting no by roll call vote.

HOUSE OF REPRESENTATIVES

Roll Call NATURAL RESOURCES COMMITTEE

DATE 2-21-03

NAME	PRESENT	ABSENT	EXCUSED
REP. CINDY YOUNKIN, CHAIRMAN			✓
REP. JIM PETERSON, VICE CHAIR, MAJORITY	✓		
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY	✓		
REP. DEBBY BARRETT	✓		
REP. LARRY CYR	✓		
REP. SUE DICKENSON	✓		
REP. RON ERICKSON	✓		
REP. GEORGE EVERETT	✓		
REP. KIM GILLAN			✓
REP. CHRISTOPHER HARRIS	✓		
REP. CAROL LAMBERT	✓		
REP. MIKE LANGE	✓		
REP. RICK MAEDJE	✓		
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS	✓		
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN	✓		



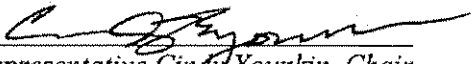
HOUSE STANDING COMMITTEE REPORT

February 22, 2003

Page 1 of 17

Mr. Speaker:

We, your committee on Natural Resources recommend that House Bill 437 (first reading copy - white) do pass as amended.

Signed: 
Representative Cindy Younkin, Chair

And, that such amendments read:

1. Title, line 9.

Strike: "OR WATER QUALITY LAWS"

2. Title, lines 14 and 15.

Following: the first "UNDER THE" on line 14

Insert: "MONTANA ADMINISTRATIVE PROCEDURE ACT,"

Following: "LAWS," on line 14

Strike: remainder of line 14 through ", " on line 15

Insert: "NATURAL STREAMBED AND LAND PRESERVATION ACT, HAZARDOUS
WASTE MANAGEMENT FACILITY LAWS, COAL AND URANIUM MINE
RECLAMATION LAWS, AND METAL MINE RECLAMATION LAWS"

3. Title, line 19.

Following: "THAT"

Strike: "A PERSON"

Insert: "CERTAIN PERSONS"

Following: "CONDUCT"

Strike: "INVESTIGATIONS OR"

4. Title, line 21.

Following: "SECTIONS"

Insert: "2-4-702,"

Committee Vote:

Yes 12, No 6.

m. P. P. P.
2/22 2:15

401358SC.hhn

5. Title, line 22.

Strike: "75-5-401, 75-5-403, 75-5-614,"

Following: "75-7-102,"

Insert: "75-7-121,"

Strike: "75-10-703,"

Insert: "75-10-420,"

6. Title, line 23.

Following: "82-4-202,"

Insert: "82-4-239, 82-4-252,"

7. Title, line 24.

Following: "82-4-301,"

Insert: "82-4-349,"

Following: "82-4-402,"

Insert: "82-4-427, 82-4-436,"

Following: "DATE"

Strike: "AND"

Insert: ", "

8. Title, line 25.

Following: "DATE"

Insert: ", AND A TERMINATION DATE"

9. Page 3, line 1.

Insert: "Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases.

(1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has

the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed required by the court for to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.""

Renumber: subsequent sections

10. Page 3, line 3.

Strike: "Findings"

Insert: "Intent"

11. Page 3, lines 5 and 6.

Following: "1979." on line 5

Strike: remainder of line 5 through "constitution." on line 6

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system."

12. Page 3, line 11.

Strike: "Findings"

Insert: "Intent"

13. Page 3, lines 13 and 14.

Following: "Act." on line 13

Strike: remainder of line 13 through "constitution." on line 14

Insert: "It is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

14. Page 4, line 25.

Following: "rights"

Insert: ", by the legislature and the courts,"

15. Page 4, line 28.

Strike: "Findings"

Insert: "Intent"

16. Page 4, line 30 through page 5, line 1.

Following: "Montana." on page 4, line 30

Strike: remainder of line 30 through "constitution." on page 5, line 1

Insert: "It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

17. Page 5, line 6.

Following: "balanced"

Insert: ", by the legislature and the courts,"

18. Page 6, line 1.

Following: "A"

Insert: "judicial"

Following: "chapter"

Insert: "by a party other than the permit applicant or

permitholder"

Following: "for"

Insert: "a preliminary"

19. Page 6, line 2.

Following: "issued"

Insert: "unless otherwise agreed to by the permit applicant or permitholder"

20. Page 9, lines 11 and 12.

Strike: subsection (13) in its entirety

21. Page 11, lines 26 and 27.

Strike: subsection (12) in its entirety

22. Page 12, line 9.

Strike: "Findings"

Insert: "Intent"

23. Page 12, lines 11 and 12.

Following: "chapter." on line 11

Strike: remainder of line 11 through "constitution." on line 12

Insert: "It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

24. Page 12, line 19 through page 15, line 26.

Strike: sections 9 through 11 in their entirety

Renumber: subsequent sections

25. Page 15, line 29.

Strike: "Findings"

Insert: "Intent"

26. Page 16, lines 1 and 2.

Following: "1975." on line 1

Strike: remainder of line 1 through "constitution." on line 2

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and

provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

27. Page 16, line 10.

Insert: "Section 11. Section 75-7-121, MCA, is amended to read:

"75-7-121. Review. Any review of final action by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur."

Renumber: subsequent sections

28. Page 16, line 12.

Following: "Legislative"

Insert: "intent,"

Following: "findings"

Insert: ", "

29. Page 16, lines 14 and 15.

Following: "Act." on line 14

Strike: remainder of line 14 through "constitution." on line 15

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

30. Page 16, line 22.

Strike: "Findings"

Insert: "Intent, findings,"

31. Page 16, lines 24 and 25.

Strike: lines 24 and 25 in their entirety

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

32. Page 17, lines 8 through 15.

Strike: section 15 in its entirety

Insert: "Section 14. Section 75-10-420, MCA, is amended to read:

"75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must

be brought in the county in which the facility is located or is proposed to be located."

Renumber: subsequent sections

33. Page 17, line 17.

Strike: "findings"

Insert: "intent"

34. Page 17, line 27 through line 29.

Following: "Act." on line 27

Strike: remainder of line 27 through "constitution." on line 29

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

35. Page 17, line 30 through page 18, line 1.

Strike: "investigation" on page 17, line 30 through the first "or" on page 18, line 1

36. Page 18, line 6.

Strike: "Findings"

Insert: "Intent"

37. Page 18, lines 8 and 9.

Following: "Act." on line 8

Strike: remainder of line 8 through "constitution." on line 9

Insert: "It is the legislature's intent that the requirements of the Megalandfill Siting Act provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

38. Page 18, line 24.

Strike: "Findings"

Insert: "Intent, findings,"

39. Page 18, lines 26 through 28.

Following: "Act." on line 26

Strike: remainder of line 26 through "constitution." on line 28

Insert: "It is the legislature's intent that the requirements of

this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

40. Page 19, line 9.

Strike: "Findings"

Insert: "Intent, findings,"

41. Page 19, lines 10 through 12.

Following: "part." on line 10

Strike: remainder of line 10 through "constitution." on line 12

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

42. Page 20, line 11.

Strike: "Findings"

Insert: "Intent, findings,"

43. Page 20, lines 13 and 14.

Following: "Act." on line 13

Strike: remainder of line 13 through "constitution." on line 14

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

44. Page 20, line 23.

Following: "Policy"

Insert: ", intent,"

45. Page 20, lines 25 and 26.

Following: "Act." on line 25

Strike: remainder of line 25 through "constitution." on line 26

Insert: "It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

46. Page 22, line 18.

Following: "A"

Insert: "judicial"

Following: "chapter"

Insert: "by a party other than the certificate holder or
applicant"

Following: "for"

Insert: "a preliminary"

47. Page 22, line 19.

Following: "chapter"

Insert: "unless otherwise agreed to by the certificate holder or
applicant"

48. Page 23, line 2.

Following: "A"

Insert: "judicial"

Following: "chapter"

Insert: "by a party other than the certificate holder or
applicant"

Following: "for"

Insert: "a preliminary"

49. Page 23, line 3.

Following: "chapter"

Insert: "unless otherwise agreed to by the certificate holder or
applicant"

50. Page 23, line 6.

Strike: "Findings"

Insert: "Intent, findings,"

51. Page 23, lines 8 and 9.

Following: "Act." on line 8

Strike: remainder of line 8 through "constitution." on line 9

Insert: "It is the legislature's intent that the requirements of
this chapter provide adequate remedies for the protection of
the environmental life support system from degradation and
provide adequate remedies to prevent unreasonable depletion
and degradation of natural resources."

52. Page 24, line 4.

Strike: "Findings"
Insert: "Intent, findings,"

53. Page 24, lines 6 and 7.

Following: "Act." on line 6

Strike: remainder of line 6 through "constitution." on line 7

Insert: "It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

54. Page 25, line 8.

Strike: "Findings"

Insert: "Intent -- findings"

55. Page 25, lines 10 and 11.

Following: "Act." on line 10

Strike: remainder of line 10 through "constitution." on line 11

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

56. Page 25, line 29.

Strike: "Policy"

Insert: "Intent -- policy"

57. Page 26, lines 1 and 2.

Following: "Act." on line 1

Strike: remainder of line 1 through "constitution." on line 2

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

58. Page 27, line 5.

Insert: "Section 28. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct,

operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by ~~sections 1 and 2~~, Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of

past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining

practices."

"

Insert: "Section 29. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state or any person having an interest which that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest which that is or may be adversely affected may bring an action of mandamus ~~in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located.~~ The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his the officer's or employee's duties. ~~If he the officer or employee fails to do so obey the order,~~ the public officer or employee ~~shall~~ must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his the person's own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder under this part. However, ~~no such the~~ action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued hereunder under this part. Any person may intervene as a matter of right in any such the civil action. ~~Nothing in this This~~ section ~~restricts~~ does not restrict any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder under this part or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages, ~~(including reasonable attorney and expert witness fees),~~

only in the county in which the strip- or underground-coal-mining operation complained of is located. ~~Nothing in this~~ This subsection affects does not affect the rights established by or limits imposed under ~~chapter 71 of~~ Title 39, chapter 71.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, ~~(including attorney and expert witness fees),~~ to any party whenever the court determines ~~such that the~~ award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.""

Renumber: subsequent sections

59. Page 27, line 7.

Following: "Legislative"

Insert: "intent and"

60. Page 27, lines 8 through 10.

Following: "part." on line 8

Strike: remainder of line 8 through "constitution." on line 10

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

61. Page 27, line 22.

Insert: "Section 31. Section 82-4-349, MCA, is amended to read:

"82-4-349. Limitations of actions -- venue -- injunction.

(1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permit holder or applicant must include an action for a preliminary injunction against the party to whom the license or permit was issued unless otherwise agreed to by the license or permit holder or applicant."

Renumber: subsequent sections

62. Page 27, line 24.

Strike: "Findings"

Insert: "Intent, findings,"

63. Page 27, lines 25 through 27.

Following: "Act." on line 25

Strike: remainder of line 25 through "constitution." on line 27

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

64. Page 28, line 8.

Insert: "Section 33. Section 82-4-427, MCA, is amended to read:

"82-4-427. Hearing -- appeal -- venue -- injunction. (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department's decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(3) An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permit holder or applicant must include an action for a preliminary injunction against the party to whom the permit was issued unless otherwise agreed to by the permit holder or applicant."

Insert: "Section 34. Section 82-4-436, MCA, is amended to read:

"82-4-436. Plan amendments -- venue -- injunction. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or

permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

- (a) an identification of the existing plan or permit;
- (b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and
- (c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include an action for a preliminary injunction against the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant."

Renumber: subsequent sections

65. Page 28, line 10.

Following: "Legislative"

Insert: "intent,"

Following: "findings"

Insert: ", "

66. Page 28, lines 12 and 13.

Following: "Act." on line 12

Strike: remainder of line 12 through "constitution." on line 13

Insert: "It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

67. Page 28, line 26.

Following: "action"

Insert: "is proposed to occur or"

68. Page 28, line 27.

Following: "activity"

Insert: "is proposed to occur or"

69. Page 28, line 28.

Following: "activity"

Insert: "is proposed to occur or"

70. Page 28, line 30.

Strike: "32"

Insert: "36"

71. Page 29, line 1.

Strike: "32"

Insert: "36"

72. Page 29, line 2.

Insert: "NEW SECTION. Section 38. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

73. Page 29, line 7.

Insert: "NEW SECTION. Section 41. Termination. [Section 7] terminates July 1, 2005."

- END -

HOUSE OF REPRESENTATIVES**Roll Call Vote****NATURAL RESOURCES COMMITTEE**DATE 2-21-03 BILL NO 437 MOTION NO. 1MOTION: LANGE: MOVED AMENDMENT, 12-6

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>ABSENTEE</u>
REP. JIM PETERSON, VICE CHAIR, MAJORITY	✓		
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY		✓	
REP. DEBBY BARRETT	✓		
REP. LARRY CYR	✓		
REP. SUE DICKENSON		✓	
REP. GEORGE EVERETT	✓		
REP. KIM GILLAN		(✓)	
REP. CHRISTOPHER HARRIS		✓	
REP. CAROL LAMBERT	✓		
REP. MIKE LANGE	✓		
REP. RICK MAEDJE	✓		
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS	✓		
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN		✓	
REP. RON ERICKSON		✓	
REP. CINDY YOUNKIN, CHAIRMAN	✓		

HOUSE OF REPRESENTATIVES

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE 2-21-03 BILL NO 437 MOTION NO. 2
 MOTION: LANGE MOVED AS AMENDED, 12-6
AND FINAL VOTE

NAME	AYE	NO	ABSENTEE
REP. JIM PETERSON, VICE CHAIR, MAJORITY	✓		
REP. GAIL GUTSCHE, VICE CHAIR, MINORITY		✓	
REP. DEBBY BARRETT	✓		
REP. LARRY CYR	✓		
REP. SUE DICKENSON		✓	
REP. GEORGE EVERETT	✓		
REP. KIM GILLAN		Ⓛ	
REP. CHRISTOPHER HARRIS		✓	
REP. CAROL LAMBERT	✓		
REP. MIKE LANGE	✓		
REP. RICK MAEDJE	✓		
REP. BRUCE MALCOLM	✓		
REP. BRAD NEWMAN	✓		
REP. JACK ROSS	✓		
REP. SCOTT SALES	✓		
REP. VERONICA SMALL-EASTMAN		✓	
REP. RON ERICKSON		✓	
REP. CINDY YOUNKIN, CHAIRMAN	✓		

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 5, 2003 at 3:06 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Gregory D. Barkus (R)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Roberta Opel, Committee Secretary

Video-Taped Committees: This is the video log of a committee hearing. The log provides a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

Committee Business Summary:

Hearing & Date Posted: HB 437, 3/2/2003, HB 303, 3/2/2003,
HB 436, 3/2/2003
Executive Action: None

HEARING ON HB 437

Opening Statement by Sponsor: REP. ALAN OLSON, HD 8, Roundup, presented HB 437; an act generally revising laws governing the environment.

Proponents' Testimony:

3:08pm Leo Berry, representing Western Environmental Trade Association (WETA) **EXHIBIT(nas46a01)** and **EXHIBIT(nas46a02)**
3:19pm Jerry Driscoll, representing MT. AFL-CIO
3:20pm Ellen Engstedt, representing MT. Wood Products Association
3:21pm Don Serba, Pulp Paper grassroots organization
3:22pm John Forkin, MT. State Building and Construction Assoc.
3:25pm Bob Pavlovich, IBEW-223
3:26pm Leif Griffin, Smurfit-Stone Container
3:26pm John Youngberg, MT. Farm Bureau
3:28pm Bob Gilbert, MT. Petroleum Marketers and C-Store Assoc.
3:29pm Ken Losh, Stone Container, Missoula
3:30pm Cary Hegreberg, MT. Contractors' Association
3:31pm Spook Stang, MT. Motor Carriers Association
3:32pm John Forkan, MT. Building Trades
3:33pm Gail Abercrombie, MT. Petroleum Association
3:34pm Webb Brown, MT. Chamber of Commerce
3:34pm Peggy Trenk, MT. Association of Realtors
3:35pm Jerome Anderson, Encore Acquisition
3:35pm Jim Mockler, MT. Coal Council
3:37pm Ted Natinoli, Missoula Mining Association
3:39pm Cory Swanson, Plum Creek Timber Company
3:40pm Ray Coniff, Missoula
3:41pm Willy Heffin, MT. Oil and Gas Producers
3:41pm Patrick Montalban, representing gas producers

Opponents' Testimony:

3:43pm Tamara Tragakiss, on behalf of Northern Plains Resource Council(NPRC)**EXHIBIT(nas46a03)** EXHIBIT 3a
3:46pm Ann Hedges, Montana Environmental Information Center (MEIC)**EXHIBIT(nas46a04)** **EXHIBIT(nas46a05)** EXHIBIT 5a
3:51pm Matt Klifford, representing Clark Fork Coalition
4:00pm Don Judge, on behalf of the Montana Sierra Club
4:07pm Wade Sikorski, representing himself **EXHIBIT(nas46a06)**
4:10pm Arleen Boyd, Stillwater Protective Assoc.
EXHIBIT(nas46a07)
4:16pm Brenda Hall, Tongue River Water User's Association
4:17pm Lynn Fairbanks, representing herself

SENATE COMMITTEE ON NATURAL RESOURCES

March 5, 2003

PAGE 3 of 5

Questions from Committee Members and Responses:

4:17pm Begin
4:53pm End
36 min Elapsed time

Closing by Sponsor:

4:54pm REP. OLSON closed the hearing on HB 437.

HEARING ON HB 303

Opening Statement by Sponsor: REP. ALAN OLSON, HD 8, Roundup, opened the hearing on HB 303; an act modifying the definition of "facility" under the Montana Major Facility Siting Act as it relates to transmission lines.

Proponents' Testimony:

5:01pm Bob Pavlovich, IBEW-233
5:02pm Jim Mockler, MT. Coal Council
5:03pm Steve Wade, Great Northern Properties
5:03pm Cary Hegreberg, MT. Contractors' Association
5:04pm Don Allen, WETA

Opponents' Testimony:

5:05pm Michele Reinhart, NPRC EXHIBIT(nas46a08)
5:10pm Patrick Judge, MEIC EXHIBIT(nas46a09) and submitted written testimony on behalf of Renewable Northwest Project EXHIBIT(nas46a10)
5:13pm Wade Sikorski, representing himself

Questions from Committee Members and Responses:

5:15pm Begin
5:26pm End
11 min Elapsed time

Closing by Sponsor:

5:28pm REP. OLSON closed the hearing on HB 303.

HEARING ON HB 436

Opening by Sponsor: REP. ALAN OLSON, HD 8, Roundup, presented HB 436; an act eliminating compliance with the Montana Environmental

BASICS OF HB 437

Testimony of Leo Berry

1. "75-2-102. Policy Findings INTENT - - policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. ~~The legislature finds that compliance with the requirements of parts 1 through 4 of this chapter and the rules adopted to implement parts 1 through 4 of this chapter constitutes compliance with the constitution. IT IS THE LEGISLATURE'S INTENT THAT THE REQUIREMENTS OF PARTS 1 THROUGH 4 OF THIS CHAPTER PROVIDE ADEQUATE REMEDIES FOR THE PROTECTION OF THE ENVIRONMENTAL LIFE SUPPORT SYSTEM FROM DEGRADATION AND PROVIDE ADEQUATE REMEDIES TO PREVENT UNREASONABLE DEPLETION AND DEGRADATION OF NATURAL RESOURCES.~~

2. (2) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as that will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. ~~This policy must be balanced, BY THE LEGISLATURE AND THE COURTS, with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.~~

3. (2) A JUDICIAL challenge to a permit issued pursuant to this chapter BY A PARTY OTHER THAN THE PERMIT APPLICANT OR PERMITHOLDER must include an action for A PRELIMINARY injunction against the party to whom the permit was issued UNLESS OTHERWISE AGREED TO BY THE PERMIT APPLICANT OR PERMITHOLDER.

4. (3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

5. (3) A person who is not subject to an administrative or judicial order may not conduct any ~~investigation or~~ remedial action on any site that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part meets the constitutional requirements of Article II, section 3, and Article IX of the Montana constitution."

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 3/5/03

BILL NO. HB 437

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

EXHIBIT NO. 3

DATE 3/5/03

BILL NO. HB 437

**Official Testimony of Northern Plains Resource Council in opposition to HB 437
Presented by Tamara Tragakiss
To the Senate Natural Resources Committee
March 5, 2003**

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, Thank you for allowing me to testify TODAY. My name is Tamara Tragakiss and I drove from MY HOME IN the Boulder Valley, south of Big Timber, to ask you to consider the impact that HB 437 will have on our communities.

I am speaking on behalf of the Northern Plains Resource Council—a family agriculture and conservation group working to help Montanans find the right balance between the economy and the environment.

I live and take care of a small ranch Sweet Grass County. Just over the mountain from my home, perhaps five miles as the crow flies, is the Stillwater Mining Company's East Boulder operation. I am currently a member of the Good Neighbor Agreement Oversight Committee, which has proven itself to be of positive value for both the community and the mine. I have some handouts for you today about our Good Neighbor Agreement.

Since 1999 I have participated through a local affiliate of the Northern Plains Resource Council to ensure that our valley is protected from short and long-term impacts of the mine. Our group, Cottonwood Resource Council, has about eighty members. Most of us live and work in Sweet Grass County and are acutely aware of the negative as well as the positive implications of having a mine in our community.

We have participated diligently, since the early 1980s, with the mine and the regulatory agencies, to ensure that when the mine began development it would do so within a framework that reflected our community's values of clean water and open space. Protection of the valley's agricultural and recreational tourism bases was paramount in our minds, but so too was the promise of well-paying jobs for our own friends and neighbors.

When the Department of Environmental Quality released Stillwater Mine's draft Water Discharge Permit for the East Boulder, we had legitimate concerns regarding the protections it granted our watershed. We felt they were inadequate and did not meet our constitutional right to a "clean and healthful environment." We poured through pages and pages of the draft permit and all of its related documents. We raised money locally to hire biologists, hydrologists and mining engineers to give us their opinions about how the permit could be improved.

By the end of the comment period, we had identified numerous environmental problems with the permit and offered many constructive solutions in hundreds of pages of comments to the DEQ.

Exhibit : 3@

**This exhibit is a pamphlet which is over the
maximum amount of text that can be scanned.**

**If you wish to view it,
it is on file at the
Montana Historical Society
225 North Roberts Street
Helena, MT
(406) 444-4774**



Exhibit Number: 4

**This exhibit is on legal size paper that
cannot be scanned in its entirety.
If you wish to view this exhibit it is on file at
the**

**Montana Historical Society
225 North Roberts Street
Helena, MT 59601
(406) 444-4774**

VOTE AGAINST HB 437**HB 437 would make injunctions mandatory for all permit appeals**

- Requiring an injunction against a company is an unnecessarily extreme measure to force citizens to seek. Because it would require actions against the company that are not necessarily warranted, this bill would make lawsuits more complex, time consuming, and costly.
- Challenges to permits are more appropriately made against the DEQ – the permitting body – rather than the company receiving the permit. An injunction would more appropriately enjoin the state for issuing the permit. What would an injunction against the company seek to stop the company from doing?
- This bill wrongly assumes that challenges to permits are filed to stop development. This bill would prohibit citizens and groups from taking less extreme measures to protect Montana's water quality, clean air, and other resources.

HB 437 would change the venue of the injunction that would now be required.

Under HB 437, mandatory injunctions against a company for the slip-up of an agency would have to be heard in the district court nearest the action in question.

- This will cost the state and taxpayers more money as the department in question would have to incur the travel costs associated with the legal wrangling.
- Who will pay for the new burden to the district courts that are now hearing cases they've never dealt with before?

Air quality permit appeals in the last four years.

Who Appealed / Company (all appeals were of DEQ decisions)	Issue	Outcome
Citizens group - Pompey Pillar's historic Preservation Association / United Harvest (2000)	Impacts on historical value of Pompey's Pillar because of high speed grain elevator facility	Went to the Supreme Court and lost
Company - Columbia Falls Aluminum Company - (2001)	Appealed permit conditions	Settled
Neighbors of Rail Energy temporary generation facility at Sappington Junction (2001)	Appealed permit	Permit withdrawn because DEQ had a problem with the modeling.
Citizens - Holcim Cement Co.(2001)	Appealed permit to increase level of petroleum coke fuel allowed at kiln because of increased SO2 emissions	Settled before a hearing. Settlement required more monitoring of emissions
Citizens - Northwestern Energy Gas Fired Power plant in great falls (2001)	Appealed permit conditions	Settled before a hearing. Settlement required offsets of green house gas emissions.
Company - Conoco (2001)	Appealed permit conditions	Settled
Company - Louisiana Pacific (2001)	Appealed permit conditions	Settled
Citizens - Sterling Mining Company's permit for the Rock Creek Mine (2002)	Appealed state interpretation of federal Clean Air Act and its implementation	Settled before a hearing. Settlement required increased monitoring.
Citizens - Continental Energy gas fired power plant in Butte (2002)	Appealed constitutional issue regarding increase of green house gas emissions	Dropped the appeal immediately and went to court on constitutional claims. Case was dismissed.
Company - Malmstrom Air Force Base (2003)	Appealed permit conditions	Unresolved
Citizens - Roundup Power Plant (2003)	Appealed permit conditions (BACT, SO2, PM-10, CO2, Mercury,)	Unresolved

Over 700 air quality permits have been issued by DEQ in the last 4 years. Citizens have challenged less than 1% of those permits.

EXHIBIT NO. 6

DATE 9/5/03

BILL NO. HB 437

Testimony against HB 437

*A Bill Designed to Violate Our Right to a Clean and Healthful Environment
By Wade Sikorski, Ph.D.*

Mr. Chairman, members of the committee, my name is Wade Sikorski. I live on my family's ranch in southeastern Montana. I have a Ph.D. in political science from the University of Massachusetts in Amherst. My specialization is contemporary political theory. My research and publishing interests include political ecology. I have published one book on this topic, *Modernity and Technology: Harnessing the Earth to the Slavery of Man*, and several essays in professional journals as well. Currently, I am suing the Department of Public Health and Human Services for refusing to investigate a childhood leukemia cluster in Fallon County.

In my considered opinion, HB 437 is an unconstitutional and immoral attempt to undermine our right to a clean and healthful environment. Repeatedly it states that the legislature is fulfilling its constitutional duty and providing adequate remedies for the protection of the environmental life support system and to prevent degradation of natural resources.

I submit that if the legislature really were meeting its constitutional duties, it would not need to pat itself on the back and tell us, whatever its detractors were saying, that it was doing a good job. An appeal to the evidence--falling cancer and birth defect rates, perhaps, or a flourishing of formerly endangered species--would demonstrate that the legislature's remedies were, indeed, adequate.

However, a look at available evidence indicates that the legislature's efforts are entirely inadequate. It did not provide adequate funds or adequate legislation to prevent the disaster in Libby, where the state allowed WR Grace to kill hundreds of people. Perhaps even worse, it has not provided adequate funds or legislation to prevent 14 counties in Montana, including the cities of Billings, Great Falls, and Missoula, from developing breast cancer rates that are among the highest in the world. It has not even attempted to warn the public about or remedy the high rate of birth abnormalities in the southeastern quadrant of Montana, where birth abnormalities are about 3 times as high as they are in the other three quadrants of the state. And, of most immediate concern to me, the Department of Public Health and Human Services has refused to investigate a childhood leukemia cluster in my community, where we have had 4 cases of childhood leukemia in the last 10 years, when we should have had at the most only 0.5 cases.

The legislature's failure to provide adequate remedies for the environmental life support systems is not merely the result of negligence but deliberate and intentional. Several sessions ago, the legislature set a standard for arsenic in waters released from mines that allowed 1 in 1000 people

to develop cancer. A permit to operate a gold mine under this standard is nothing short of a license to commit random premeditated murder.

In the context of these failures and the deliberate willingness of the legislature to sacrifice the environment and public health for private profit, the bill's assertion that the legislature has provided adequate remedies for the protection of the environmental life support system is nothing short of Orwellian doublespeak. It is patently false, and can only be interpreted as yet another legislative license for industry to pollute the environment, maim our bodies, and take our lives to increase corporate profit.

The imbalance of "balance":

Following perhaps the public relations advice of industry and the rhetoric of the Wise Use movement, the legislation frequently invokes the metaphor of "balance" to justify what is actually an imbalance, an increasing violation of the right to a clean and healthful environment. It states:

The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The implementation of these rights requires the balancing of the competing interests associated with the rights, by the legislature and the courts, in order to protect the public health, safety, and welfare."

On my reading, as a political theorist, the right to a clean and healthful environment is a continuation of the American tradition of possessive individualism, not a radical departure from it. This new right is not a counter to the right to own property, an alien graft upon the American tradition of possessive individualism, but a logical extension of it. Pollution is a violation of individual in the same way that a property taking is. Leaving its industrial source, traveling through air, water, and food to other people, where it damages their bodies and corrupts their property, pollution is a trespass upon private property as well as the body. It violates a person in the same way that theft does, taking what is not its to take. As a violation of the person, pollution is a private takings that the state is obligated to prevent, just as it prevents murder, arson, and rape.

When the founders inserted the right to a clean and healthful environment into our constitution, as the transcripts of the constitutional convention indicate, they were trying to prevent what they saw as a persistent abuse in Montana by powerful corporations of the individual's right not to be violated by what they did not consent to. They were concerned about how Anaconda Copper had

twisted the law to its purposes, leaving the citizens of Montana at its mercy, exploiting their land and their health for its profit. They were mindful of how this powerful corporation was able to corrupt the legislature, and they wanted a constitutional right that would protect individuals from corporations that would take from individuals what was not theirs to take.

Simply put, the right to a clean and healthful environment is but an explicit articulation of what is already implicit in the right to own property. Both protect the individual from trespass by others. As such, these rights are not opposed to each other, needing to be balanced against each other, but are essentially in harmony with each other. If you are really serious about protecting private property rights, you are also going to end up being really serious about limiting pollution. There really is no difference between saying that a person cannot hunt on your land and saying that a mining corporation cannot poison the air or water that ends up on your land or the food that you eat. In both cases you are protecting the individual from transgression by others.

Perhaps it is not an accident that the Northern Plains Resource Council, one of the strongest advocates of environmental protection in the state is also one of the strongest advocates of property rights in the state. Almost every issue that Northern Plains has taken up for the last 10 years, from protecting water quality, to eminent domain, to requiring responsible cbm development, to limiting the introduction of genetically modified organisms, has been interpreted by the leadership of Northern Plains as a defense of private property rights. The members of Northern Plains simply did not want their property or their health put at risk or used in ways that they did not consent to. If private property rights really were taken seriously, and the powerful corporations were not allowed to take as they pleased from much less powerful individuals, Northern Plains would have gotten all of the environmental protections that it wanted.

So this whole notion of a "balance" between the right to a clean and healthful environment and the right to own property is logically incoherent. The two are not opposed, needing to be balanced, they are in agreement, reinforcing each other. Protecting private property rights, done fairly and rightly, will protect the environment. However, in the name of "balance," the proponents of this bill are trying to tilt everything in favor of large property owners, against the individual, letting large property owners abuse and exploit small ones, as they did in the days when Anaconda Power ran the state. In the context of everything the legislature has done over the last several sessions, this "balance" is not about protecting the rights of individuals, it is about giving license to large corporations to violate them.

This bill is as much of a threat to the health of our bodies and the land as it is a handout to greedy and unscrupulous corporations. If you value your health and the health of all of those you hold dear, you will vote against it.

Senate Natural Resources Committee
3/5/03
Testimony – HB 437

~~det~~ Chairman Tash, members of the committee,

I am Arleen Boyd from Fishtail, Montana. I work as a business and marketing consultant and I chair the Stillwater Protective Association – a group with a nearly 35-year history of bringing citizens together to work on issues that are important in our community, including conservation, agriculture, and responsible natural resource development. We know from experience that companies, including those involved in natural resource extraction, can operate responsibly, meet their legal and moral obligations to protect the land and water and air that sustain all of us all, and succeed financially.

My comments today on House Bill 437 come from two perspectives –

- 1) As a business consultant working mostly with companies that provide or use computer technologies to address needs in a range of engineering and other industries
- 2) Representing a group with a long history and broad local support for working to promote responsible development in our community

First as both a citizen and a businessperson I'd like to ask the obvious question: What problem is this bill designed to fix? After reading the bill it appears to our members to be designed to fix a problem that does not exist – or if it exists can better be fixed by addressing its real causes. The bill appears to assume that citizen challenges to permits are getting in the way of ^{economic} development and therefore it is necessary to make it extremely difficult to mount those challenges by:

- Requiring that anyone challenging a permit obtain an injunction (which we all know is an expensive process that

probably also will require bonding). Moreover, injunctions require proof of imminent irreparable damage – and most of the time, in our experience we are trying to help the company and the agencies plan in a way that will avoid potential damage, well before it is imminent or irreparable

- Weakening our constitutional right to a clean and healthful environment so that there will be no danger of delays to development when we see that right violated – Essentially saying that the requirement for a clean and healthful environment has been met here by the language of this bill ... before any evidence of impact rolls out into our communities. Do we really mean to say that the framers of our constitution really meant that we have a right to a clean and healthful environment as defined by the 2003 legislature – or that we have that right so long as companies are *willing* to develop in a way that protects that right, but we certainly never meant to *oblige* them to do that or challenge them if they violated that right.

The logic appears to be: All delays are bad – challenges cause delays – therefore all challenges are bad and must be constrained.

The logic does not hold for two reasons:

- Challenges do not usually cause delays – in our experience, never have

- Fast track decision-making does not always deliver the best results. Even delays can, on occasion, be beneficial as companies and agencies have the opportunity to evaluate valuable input and improve their plans. Improved plans improve performance and help avoid delays later as problems become evident.

And the solution ignores the value resulting from the challenges which, in, in our experience is extraordinary.

In Stillwater County our group and its supporters have frequently challenged or been on the brink of challenging permits at the mine down the road and I cannot think of a single time that our concerns or our participation in an EIS, EA or permitting process has delayed production in any way. In fact, the results have been better decisions and better permits. We are not obstructionists – we are farmers, ranchers, business people, teachers, retired people. We are voters. Our roots are deep and our commitment to our community is strong. We have hired experts and experts in our communities have volunteered information and insight to improve development plans at the mine. The long list of results from our input have included:

- Transportation provisions – bussing and car pooling to protect residents and workers on some very dangerous stretches of highway
- Changed plans for the location of a smelter. Instead of a smelter down a dangerous two lane road in an area likely to result in air quality damage as originally proposed, we have a smelter in a safer location, which, by the way, has proved to be a measurable advantage to the company now that metals are being delivered from the Big Timber area as well as from Nye.
- Mitigations including light reduction, noise control, and wildlife protection
- Additional monitoring requirements, which protect the community and now are proving to protect the company which can demonstrate impacts over time relative to other activities on the river. In fact, the company can demonstrate its ability to control negative impacts because it has been required to monitor and report – and because we have pushed for the right to examine those records we can confidently assess and support their actions.
- Investigation and piloting of technologies for using mine tailings underground and above ground in engineering applications – reducing the volume of tailings to be placed in waste impoundments

Production never stopped as we protested and participated in Stillwater County. Production has, over the years, slowed down in response to market conditions and may have accelerated in response to expectations set by stock analysts or lenders. Jobs did not go away, even though frequently the heated dialogues between the community and the company included threats of damage to our local economy and lost jobs if the company were obliged to implement protections and make the changes we sought. Jobs, in fact, rose and fell with demand for the metals and revenues rose and fell with prices for the metals and production costs. The cost of doing business included complying with regulations and as the company demonstrated good faith and good environmental practices, the personnel costs associated with dealing with community complaints undoubtedly went down as performance improved. And as the agencies came to expect good performance, their oversight occasionally may have become less intrusive.

Today we have a Good Neighbor Agreement, a legally binding contract between ourselves and the company, and its successors, that guarantees us access to information from the company and a process for addressing important issues that are important to the community. We would not have that contract if had there not been a fairly level playing field for the company and our association to negotiate on. We both came to the table with rights – ours included holding our agencies and developers responsible for their impacts on our community and environment – through permits and legal requirements. Theirs included a right to develop. We reached an agreement that is in the best interests of all parties and an object of confidence and pride in our community.

Why would the company do this? Because it serves their interests and the interests of shareholders.

Why are we here trying to weaken laws and make public participation in the permitting process less effective? Stillwater mining is not going to take its platinum group metals extraction business to another state where laws are weaker or tax breaks better – any more than methane gas extractors will leave our rich coal seams untapped if they are required to operate responsibly. The metals are here, deep in the

Beartooth Mountains – the gas will not suddenly appear in another location with more permissive standards – even if complying with standards were a business impediment, which it is not.

Finally, I propose alternative logic regarding challenges from concerned citizens and delays we have not seen but hear about:

Delays are caused by performance issues – solving the issues improves performance long term for the company and for the community – therefore, do not be afraid of taking the time to evaluate plans and involving responsible citizens in the process. We are smart. We know how to do good work. You need our participation.

**SENATE
NATURAL RESOURCES COMMITTEE
ROLL CALL**

DATE 8/5, 2003

MEMBER	ASSIGNMENT	PRESENT	ABSENT
Sen. Bill Tash	Chairman	✓	
Sen. Sherm Anderson	Member	✓	
Sen. Greg Barkus	Member	✓	
Sen. Jon Ellingson	Member	✓	
Sen. Rick Laible	Member	✓	
Sen. Bea McCarthy	Member	✓	
Sen. Dan McGee	Member	✓	
Sen. Gary Perry	Member	✓	
Sen. Glenn Roush	Member	✓	
Sen. Debbie Shea	Member	✓	
Sen. Ken Toole	Member	✓	
Sen. Aubyn Curtiss	Vice Chair	✓	

1

DATE 3/5/03

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 303, HB 436, HB 437

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Arleen Boyd	406 328 6645	Stillwater Protection Assoc + self	HB 437		✓
TAMARA TRAGAKISS	406 932 6295	Northern Plains Resource Council	HB 437		✓
ROBERT PANKOVICH	782-4507	IBEW-233	HB-303 436 437	X	
Bob Gilbert	439-1939	MT Petroleum Marketers & C. Store Assoc	HB 437	X	
Wade Skorki	775-638		HB 303 HB 437		X
Jim Mockler	406 623	MT Coal Council	HB 437 303, 436	X	
Don Judge	442-2968	MT Chapter, Service Club	HB 303 HB 437		X
ELLEN ENGSTADT	443-1366	MT WOOD PRODUCTS	HB 437	X	
Leo Berry	443-5468	WETA	HB 437	X	
JOHN FORKAN	444-3051	MT. BLDG. TRADES	HB 437	X	
Richard Prokes	848-7314	Self	HB 437		X
JOHN PESKO	452-1973	North Central TRADES	HB 437	X	
BRUCE WILLIAMS	307 672-7111	FIDELITY E&P	HB 436 437	X X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE MARCH 5, 2003
SENATE COMMITTEE ON NATURAL RESOURCES
BILLS BEING HEARD TODAY: HB 303
HB 436- HB 437

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Barry Stang	442-6600	MMCA	HB 437	X	
MICHELE REINHART	449-3264	NORTHERN PLAINS	HB 303		X
ERNEST NELSON	549-8856	SEU	437	✓	
TEP ANTONIO	251-5148	Missouri Chapter MMA	437	✓	
Patrick Judge	443-2520	MEIC	HB 303		✓
Jeane Songmy	272-9093	MCU	HB 437		X
Don SERBAL	544-0120	PPRC MOA	HB 437	X	
REID COWELL	251-6271	RACE LOCAL 1509	437	X	
Kim Liles	549-5385	PPRC LOCAL - 8-0585 MSA	437	X	
LEIF GRIFFIN	626-4844	SMURFIT-STONE	437	X	
Don Allen	443-5544	WEPA	303 436	X	
Steve Wade	443-6820	Great Northern Plains Bullwhip Dev.	303	X	
Cory Hagberg	2-4162	Contractors	436/37	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE MARCH 5, 2003
 SENATE COMMITTEE ON NATURAL RESOURCES
 BILLS BEING HEARD TODAY: HB 303
HB 436 - HB 437

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Lynch	723-8431	MT State Bd of Trans	437	X	
Tom Figarella	888-1756	Forward MT	437	X	
John Youngberg		MT Farm Bureau	437	X	
Gary Swanson	449-3118	Plum Creek Timber	437	X	
Jim Vonnell	442-1708	APL-CIO	437	X	
William Duffield	939-4443	MT. Assoc. of Lumber Coals Counties	303 436 437	X	
Gary Wiens	761-8333	MT Electric Co-ops Assoc.	HB 303	X	
Lynn Fairbanks	449-6127	Self	437		X
Brad Griffin	888-1755	Attwood Business & Industry Assoc.	437	X	
Peggy Trembl	443-4032	MT. Assoc. of Realtors	437	X	
WEBB BROWN	2-2405	MONTANA CHAMBER	437	X	
SEBASTIAN ANDERSON	449-348	BALCONA ACQUISITIONS	437	X	
Pam Langley	449-7391	Montana Agricultural Business ASSN.	437	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

MARCH 5, 2003

SENATE COMMITTEE ON

NATURAL RESOURCES

BILLS BEING HEARD TODAY:

HB 303

HB 436 ~ HB 437

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
ROBERT THROSSELL	459-6865	MT Wildlife Federation	437		X
Debra Busby	261-4100	Montana Refining Co	437	X	
Brenda Lindbergh-Hall	442-3261	Tongue River water users Assn	HB 437		X
A/Smith	443-3124	MTLA	HB 437		X
Janet Ellis	443-3949	MT Audubon	HB 437		X
Anne Kedges	443-2520	MEIC	HB 437		X
Gail Abercrombie	442-7582	MT Petroleum Ass	HB 436 437	X	
Patrick M. Montalban	873-9000	NMCCA	436 437	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 10, 2003 at 2:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Gregory D. Barkus (R)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Robertta Opel, Committee Secretary

Video-taped Committee: These minutes are in outline form only. The log provides a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

Committee Business Summary:

Hearing & Date Posted: HB 428, HB 144, HB 433, HB 437
Executive Action: HB 292, HB 89, HB 428, HB 144

Informational Witnesses and Testimony:

3:43pm Warren McCullough, Bureau Chief, Environmental Management,
EQC

Discussion:

3:43pm Begin
3:45pm End
2 min Elapsed time

Closing by Sponsor:

3:45pm SEN. CLARK closed the hearing on HB 433.

HEARING ON HB 437 (2nd hearing)

Proponents' Testimony:

3:49pm Gilda Glancy, representing Montanans for Responsible
Energy Development, Inc. (MRED)
3:50pm Lani Candelora, Montana Catholic Conference

Opponents' Testimony:

3:51pm Brenda L. Hall, on behalf of Tongue River Water Users
3:57pm Janet Ellis, Montana Audubon Society

Questions from Committee Members and Responses:

3:59pm Begin
4:02pm End
3 min Elapsed time

Closing by Sponsor:

4:03pm REP. ALAN OLSON, HD 8, Roundup, closed the second hearing
on HB 437.

DATE

MARCH 10, 2003

SENATE COMMITTEE ON

NATURAL RESOURCES

BILLS BEING HEARD TODAY:

HB 144 ~ HB 428

HB 433 ~ HB 437

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike Halligan	370-6551	WASH. DEP. / MONTANA	HB 428	✓	
GILDA CLANCY	443-7657	MT RED	HB 437	✓	
Janet Ellis	443-3949	MT Audubon	HB 437		✓
Sandi Olsen	444-3000	DEP	HB 144	✓	
Lani Candelora	442-5761	MT. Catholic Conf.	HB 437	✓	
Brenda Lindroff Hall	442-3261	Tongue River Water User's Assn	HB 437		✓
Boko Coughlin					
Steve Welch	444-4964	MT DEP	428 433	✓	
Angela Innocaro	495-1444	MT MINING ASSN	428 437	✓	433
Robert Javlovich	782-4507	IBEW 233	437	X	
Don Allen	443-5544	WEFA	HB 428 HB 433	✓	(Coul)
Jeff Berber	443-2500	MEIC	HB 428 HB 433	X X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN BILL TASH**, on March 17, 2003 at 3:20 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Gregory D. Barkus (R)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: Sen. Dan McGee (R)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Roberta Opel, Committee Secretary

Video-taped Committee: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

Committee Business Summary:

Hearing & Date Posted: HB 584, 3/17/2003, HB 467,
3/17/2003, HB 373, 3/17/2003
Executive Action: HB 373, HB 437, HB 683, HB 443

Questions from Committee Members and Responses:

5:26pm Begin
5:51pm End
25 min Elapsed time

Closing by Sponsor:

5:52pm SEN. OLSON closed the hearing on HB 373. EXHIBIT(nas56a11)

EXECUTIVE ACTION ON HB 373

Motion: SEN. RICK LAIBLE moved HB 373 BE CONCURRED IN. Motion carried 10-2 with SENATORS JON ELLINGSON AND KEN TOOLE voting no.

Discussion:

5:57pm Begin
5:58pm End
1 min Elapsed time

EXECUTIVE ACTION ON HB 437

Motion: Motion by SEN. BEA MCCARTHY moved HB 437 BE CONCURRED IN and moved AMENDMENT HB043706.akl. EXHIBIT(nas56a12)

Discussion:

6:00pm Begin
6:05pm End
5min Elapsed time

Vote: Motion by SEN. MCCARTHY HB 437 BE CONCURRED IN carried unanimously.

Motion: Motion by SEN. DEBBIE SHEA to adopt AMENDMENT HB043705.akl EXHIBIT(nas56a13)

Discussion:

6:11pm Begin
6:16pm End
5 min Elapsed time

Vote: Motion carried 10-2 with SENATORS ELLINGSON and TOOLE voting no on AMENDMENT HB043705.

Motion/Vote: SEN. MCCARTHY moved HB 437 AS AMENDED AS AMENDED
with SENATORS TOOLE and ELLINGSON voting no.

EXECUTIVE ACTION ON HB 683

Motion: SEN. GARY PERRY moved HB 683 BE CONCURRED IN.

Discussion:

6:19pm Begin
6:30pm End
2 min Elapsed time

Vote: Motion HB 683 BE CONCURRED IN carried 9-3 with SENATORS
ELLINGSON, TOOLE and ROUSH voting no.

EXECUTIVE ACTION ON HB 443

Motion/Vote: SEN. MCGEE moved HB 443 BE CONCURRED IN.

Discussion:

6:32pm Begin
6:38pm End
7 min Elapsed time

Informational Witnesses and Testimony:

6:38pm Begin (John North, Chief Legal Counsel, MT. Dept. of EQC)
6:41pm End
3 min Elapsed time

Vote: Motion HB 443 BE CONCURRED IN carried 10-2 with SENATORS
ELLINGSON and TOOLE voting no.

**SENATE
NATURAL RESOURCES COMMITTEE
ROLL CALL**

DATE 3/17, 2003

MEMBER	ASSIGNMENT	PRESENT	ABSENT
Sen. Bill Tash	Chairman	✓	
Sen. Sherm Anderson	Member	✓	
Sen. Greg Barkus	Member	✓	
Sen. Jon Ellingson	Member	✓	
Sen. Rick Laible	Member	✓	
Sen. Bea McCarthy	Member	✓	
Sen. Dan McGee	Member	✓	
Sen. Gary Perry	Member	✓	
Sen. Glenn Roush	Member	✓	
Sen. Debbie Shea	Member	✓	
Sen. Ken Toole	Member	✓	
Sen. Aubyn Curtiss	Vice Chair	✓	



SENATE STANDING COMMITTEE REPORT

March 18, 2003

Page 1 of 8

Mr. President:

We, your committee on Natural Resources recommend that House Bill 437 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Senator Bill Tash, Chair

To be carried by Senator Bea McCarthy

And, that such amendments read:

1. Title, line 9.

Strike: "COMPLIANCE WITH"

Insert: "ADEQUATE REMEDIES AS REQUIRED BY"

2. Title, line 10.

Following: "LAWS OR"

Insert: "OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A
LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE
RECLAMATION LAWS, "

3. Title, lines 11 through 13.

Following: "ACT" on line 11

Insert: ", OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING
RECLAMATION LAWS"

Following: "MUST" on line 11

Strike: remainder of line 11 through "ISSUED" on line 13

Insert: "PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS
FOR AN IMPROPER PURPOSE"

4. Title, line 15.

Strike: "MONTANA ADMINISTRATIVE PROCEDURE ACT,"

Committee Vote:

Yes 10, No 2.

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5. Title, line 16 through line 18.

Strike: "NATURAL" on line 16 through "METAL MINE RECLAMATION LAWS" on line 18

Insert: "THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS, "

6. Title, line 19.

Strike: "PERMITTED"

7. Title, line 20.

Following: the first "ACTIVITY"

Strike: "OR ACTIVITY AUTHORIZED IN THE CERTIFICATE"

Insert: "SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION"

8. Title, line 23.

Strike: "ON ANY SITE"

Insert: "AT ANY FACILITY"

9. Title, line 24.

Following: "2-4-702,"

Insert: "2-4-704,"

10. Title, line 25.

Strike: "75-2-211,"

11. Title, line 29.

Following: "AND,"

Strike: "AN APPLICABILITY DATE, AND A TERMINATION DATE"

Insert: "AND A RETROACTIVE APPLICABILITY DATE"

12. Page 4, line 10.

Insert: "NEW SECTION. Section 2. Determination of constitutionality. In any action filed in district court invoking

the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82 or activities taken pursuant to a license or permit issued under Title 75 or Title 82, the plaintiff shall first establish the unconstitutionality of the underlying statute."

Insert: "Section 3. Section 2-4-704, MCA, is amended to read:

"2-4-704. Standards of review. (1) The review ~~shall~~ must be conducted by the court without a jury and ~~shall~~ must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

- (i) in violation of constitutional or statutory provisions;
- (ii) in excess of the statutory authority of the agency;
- (iii) made upon unlawful procedure;
- (iv) affected by other error of law;
- (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute."

Renumber: subsequent sections

13. Page 4, line 25.

Strike: "IT"

Insert: "The Montana Environmental Policy Act is procedural, and it"

14. Page 4, lines 26 through 28.

Following: "PROVIDE" on line 26

Insert: "for the"

Following: "ADEQUATE" on line 26

Strike: remainder of line 26 through "RESOURCES" on line 28

Insert: "review of state actions in order to ensure that
environmental attributes are fully considered"

15. Page 6, line 9.

Following: "rights"

Strike: "1"

Strike: "AND THE COURTS,"

16. Page 6, line 25.

Following: "balanced"

Strike: "1"

Strike: "AND THE COURTS,"

17. Page 7, line 10.

Strike: "-- injunction for permit challenge"

18. Page 7, line 22.

Strike: "an action for A PRELIMINARY injunction against"

19. Page 7, line 23

Following: "1"

Insert: "All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

20. Page 7, line 28 through page 13, line 18.

Strike: section 7 in its entirety

Renumber: subsequent sections

21. Page 20, line 16.

Strike: "on"

Insert: "at"

Strike: "site"

Insert: "facility"

22. Page 20, line 17 through line 18.

Strike: "meets" on line 17 through "constitution" on line 18

Insert: "is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources"

23. Page 25, lines 4 and 5.

Strike: subsection (7) in its entirety

Insert: "(7) All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

24. Page 25, line 18.

Following: "include"

Strike: "an action for A PRELIMINARY injunction against"

25. Page 25, line 20.

Following: "1"

Insert: "All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

26. Page 25, line 26.

Strike: "-- injunction"

27. Page 26, line 4.

Following: "include"

Strike: "an action for A PRELIMINARY injunction against"

28. Page 26, line 6.

Following: "1"

Insert: "All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

29. Page 34, line 24.

Strike: "-- injunction"

30. Page 35, line 3 through line 4.

Following: "include" on line 3

Strike: remainder of line 3 through "against" on line 4

31. Page 35, line 5.

Following: "."

Insert: "All judicial challenges of licenses or permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

32. Page 35, line 27.

Strike: "-- injunction"

33. Page 36, line 6.

Strike: "an action for a preliminary injunction against"

34. Page 36, line 7.

Following: "."

Insert: "All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in

litigation, the court may award attorney fees and costs incurred in defending the action."

35. Page 36, line 10.

Strike: "-- injunction"

36. Page 37, line 4.

Strike: "an action for a preliminary injunction against"

37. Page 37, line 5.

Following: ". "

Insert: "All judicial challenges of amendments for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

38. Page 38, line 1.

Following: "instruction."

Insert: "(1)"

Strike: "36"

Insert: "37"

39. Page 38, line 3.

Strike: "36"

Insert: "37"

40. Page 38, line 4.

Insert: "(2) [Section 2] is intended to be codified as an integral part of Title 82 and Title 75, and the provisions of Title 82 and Title 75 apply to [section 2]."

41. Page 38, line 12 through line 15.

Strike: sections 40 and 41 in their entirety

42. Page 38, line 16.

Insert: "NEW SECTION. Section 41. Retroactive applicability."

[This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit, petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act]."

- END -